

NEW JERSEY BOARD OF PUBLIC UTILITIES

Final Readoption With Amendments

N.J.A.C. 14:3, All Utilities

Effective May 19, 2008

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PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

All Utilities

Readoption With Amendments: N.J.A.C. 14:3

Proposed: October 1, 2007, at 39 N.J.R. 4077(b)

Adopted: April 8, 2008, by the New Jersey Board of Public Utilities, Jeanne M. Fox, President, Frederick F. Butler, Joseph L. Fiordaliso, Christine V. Bator and Nicholas Asselta, Commissioners. Commissioner Bator recused herself from consideration of N.J.A.C. 14:3-1.3.

Filed: April 10, 2008, as R. 2008 d. , with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13, 48:2-16, 16.1-4, 48:2-17, 48:2-20, 48:2-23, 48:2-24, 48:2-25, 48:2-27, 48:3-2.3, 48:3-3, 48:3-4, 48:3-7.8 and 48:19-17.

BPU Docket Number: AX07040242.

Effective date: April 10, 2008, Readoptions
May 19, 2008, Amendments

Expiration date: May 19, 2013

The New Jersey Board of Public Utilities (Board) is herein readopting with amendments its rules for all utilities, N.J.A.C. 14:3. Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 14:3 expires on July 31, 2007. These rules provide basic requirements for all utilities regulated by the Board, which include water, wastewater, electricity, gas, and telephone utilities. While the Board regulates cable television operators, these are not governed by this chapter, as the Board's enabling statutes do not define them as utilities.

The proposed readoption with amendments was published in the New Jersey Register on October 1, 2007 at 39 N.J.R. 4077(b). A public hearing on the proposal was held on November 1, 2007. Comments were accepted through November 30, 2007. Approximately 207 comments were received from 19 commenters.

Based on the public comments, the Board has determined that several amendments to the rules are needed. Therefore, the Board has published a companion proposal in this issue of the New Jersey Register.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Karen D. Alexander, New Jersey Utilities Association (NJUA)
2. Robert J. Brabston, New Jersey American Water Company (NJAW)
3. Richard Chapkis, Verizon (VZ);
4. Michael D'Angelo, Intelligent Energy; and Stacey Rantala, the National Energy Marketers Association (IE/NEM)
5. Joseph Forline, Public Service Electric & Gas Company (PSE&G-PH);
6. Russell Gutshall and Sue Benedek, United Telephone Company of New Jersey, doing business as Embarq (MBQ);
7. Joint comments of the Electric Distribution Companies: Atlantic City Electric Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, and Rockland Electric Company (EDCs)

8. Mary Patricia Keefe, Pivotal Utility Holdings, d/b/a Elizabethtown Gas (ETG);
9. Sheree L. Kelly, Public Service Electric and Gas Company (PSEG);
10. Atif Malik, New Jersey Citizen Action (NJCA);
11. David McMillin, Legal Services of New Jersey (LSNJ);
12. William Mosca, Jr. and Charlene Brown, AT&T Communications (ATT);
13. Philip J. Passanante, Atlantic City Electric Company (ACE);
14. Samuel A. Pignatelli, South Jersey Gas Company (SJG-W);
15. John Stanziola, South Jersey Gas Company (SJG-PH);
16. Sarah Steindel, New Jersey Department of the Public Advocate, Division of Rate Counsel (RC);
17. Kate Tasch, New Jersey Cable Telecommunications Association (NJCTA);
18. Tracey Thayer, New Jersey Natural Gas Company (NJNG); and
19. Michael P. Walsh, Shorelands Water Company (SWC).

General comments:

1. **COMMENT:** We would like to thank the board for the opportunity to offer comments regarding the readoption of Chapter 3 regulations. We believe a process such as this which provides for an open valuable exchange of information is beneficial and will ultimately result in a more productive and efficient regulations. We support the readoption of Chapter 3 and commend the board for many of the proposed amendments which we believe provide additional clarity and understanding. (SJG-PH)

RESPONSE: The Board appreciates this comment in support of the rules.

2. **COMMENT:** We request that the Board establish a working group to revisit all of the proposed changes in N.J.A.C. 14:3 as has been done in the past with the reliability standards and the vegetation management standards. This may require suspension of the time frames for comment and implementation. It is more important to get the rules right than to get the rules done in an arbitrary time frame. We look forward to working with the board and board staff on these and other utility issues. (MBQ) (PSEG)

RESPONSE: Because chapter 3 covers all utilities, the proposal being adopted herein was developed through a collaborative effort by staff from many Board divisions. Many of these staff engaged their regulated communities in informal discussions regarding ideas and issues included in the proposal. In addition, staff based proposed amendments on past experience working with their respective divisions.

3. **COMMENT:** We have concern with the absence of a pre-proposal stakeholder process for these rules. While not required, in past proceedings, the industry and Board staff have benefited from a review and discussion of the changes being contemplated to rules prior to their formal proposal. Given the breadth, scope and impact of these changes on all utilities in New Jersey, we believe that many of the issues we must now raise could have been addressed informally and obviated the need for major changes to be requested during the formal process. We hope that in the future the Board will resume pre-proposal stakeholder meetings to facilitate a

better understanding of the impact of proposed changes on the industry. (NJUA)
(ACE) (JCP&L)

RESPONSE: Please see the response to comment 4 below.

4. **COMMENT:** Some commenters suggested a working group to address issues coming up with respect to these proposals. We and other advocates for low income customers should be part of any such working group, as well as low income consumers themselves. (LSNJ)

RESPONSE: The Board agrees that any working group or stakeholder input opportunity should be open to as many interested parties as possible, including low income consumers and their representatives. The Board has the discretion to utilize pre-proposal stakeholder meetings and working groups as it determines necessary. The Board will consider this suggestion in the future when working with chapter 3.

5. **COMMENT:** We generally support the Board's rulemaking proposal. (RC)

RESPONSE: The Board appreciates this comment in support of the rules.

6. **COMMENT:** We want to acknowledge the efforts of the board and the staff to reorganize some of these rules and make clarifying changes. Our office always appreciates efforts to make rules more accessible to the public and I think it's particularly important for these rules. I'm happy to see that there are some representatives of consumers at this hearing. And I'm hoping that there will also be some other public input as part of this rulemaking process. Public input is important, especially for rules such as these that involve consumer protections. (RC)

RESPONSE: The Board appreciates this comment in support of the rules.

7. **COMMENT:** The proposed amendments to Chapter 3 conflict directly with expressed directives from the Governor and from the Legislature. The Sunset review process requires the board to eliminate unnecessary and inefficient regulation wherever possible. Chapter 3 represents a steady accumulation of rules, many of which are decades old, and the amendments propose additional regulatory burdens on utilities. Since the initial adoption of Chapter 3, the telecommunications market has changed dramatically and it's now robustly competitive. Services offered by ILECs compete now with CLECs and with intermodal providers such as cable companies, wireless providers and voice-over internet protocol providers, and unlike ILECS these competitors generally operate free from regulation. Chapter 3 is thus inappropriate for telephone companies. These rules distort competition and harm consumers by forcing regulated carriers to respond to artificial regulatory requirements rather than to competitive forces, and by placing regulatory burdens on regulated carriers that restrict the ability of these carriers to invest in the innovative products that our consumers want. Accordingly, Chapter 3 should no longer be applied to telecom carriers. (VZ)

RESPONSE: Please see the response to comment 10 below.

8. **COMMENT:** The Board should exclude telecommunications carriers from N.J.A.C 14:3. The market for telecommunications carriers has so radically changed that is

inappropriate to apply to telecommunications service providers rules which are appropriate only for monopoly service providers. (ATT)

RESPONSE: Please see the response to comment 10 below.

9. **COMMENT:** As an incumbent local telephone company, we are experiencing heavy competition for telecommunication services by all types of providers. Voice-over IP, satellite, cable companies, competitive carriers, and wireless carriers. Residential and business switched access lines in our service territory peaked in the year 2001. Since then, total residential and business switched access lines have steadily declined and are expected to continue to decline given the intensely competitive landscape. In an intensely competitive environment such as this, more regulations are unnecessary and unwise, particularly when those additional rules are applied to the traditional telecommunications providers only. We want to compete on a competitively neutral playing field. The market today should regulate our business. No other utility area regulated by Board and subject to N.J.A.C. 14:3 is faced with such significant competitive forces. ***There are more customers in New Jersey who are serviced by CLECs than we serve in our entire service area.*** Indeed, the disparity and disadvantage in the landscape affecting telephone utilities was recently exacerbated by VoIP legislation. The Board should not apply these rules to ILECS. (MBQ)

RESPONSE: Please see the response to comment 10 below.

10. **COMMENT:** The Board states in its Economic Impact statement that increasing reporting requirements and increasing consumer protections and public safety will result in increased utility cost. The Board notes that if these increased costs are 'reasonable' the Board may allow the utility to collect the increased cost through increased customer charges. While that reasoning may be logical for some utility industries, it is not so for the telecommunications industry. The Board is not driving the rates in the telecommunications industry; they are being driven by competition. Even if the Board approves an increase in rates, there is no guarantee that the telephone service provider will generate any increase in revenue. The overall impact of an increase in rates may actually be a decrease in revenue. (MBQ)

RESPONSE: Marketplace competition standing alone does not in and of itself eliminate the need for regulation, especially in basic customer protection issues such as service (N.J.A.C. 14:3-3), discontinuances (N.J.A.C. 14:3-3A), and billing (N.J.A.C. 14:3-7). These rules are designed to set an appropriate standard for all utilities, including telecommunications carriers, so as to ensure quality service to consumers at a reasonable rate.

11. **COMMENT:** These rules should be revisited as they apply to telecommunications companies as a result of the Board's ruling at Docket No. TX07110873, *In The Matter of the Board Investigation Regarding The Reclassification of Incumbent Local Exchange Carrier (ILEC) Services As Competitive* ("ILEC Reclassification Proceeding"). As a result of the ILEC Reclassification proceeding, many of these rules may be need to be modified. (MBQ)

RESPONSE: The matter cited by the commenter is currently pending before the Board. If the Board's final determination in this proceeding necessitates modification of the rules, the Board will initiate a rulemaking to amend the rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B. Please see the response to comment 10 above for additional discussion of these issues.

12. COMMENT: Any regulations on telecommunication services in N.J.A.C. 14:3 should be forwarded into the board's regulations at N.J.A.C. 14:10, as N.J.A.C. 14:10 specifically governs telecommunication services. This would promote administrative efficiency and decrease confusion on the part of regulators, as well as telecommunications providers and users. (MBQ) (VZ) (ATT)

RESPONSE: Chapter 3 includes provisions that apply to more than one type of public utility. To repeat these provisions in each of the Board's rule chapters would be extremely repetitive, and would open the door for inconsistency in the Board's treatment of similarly situated utilities.

13. COMMENT: We congratulate the board and staff for their recent pro-competitive activities. Recognizing the vibrantly competitive marketplace for telecommunications services, the board took a forward-looking and important step of granting competitive local exchange carriers additional regulatory flexibility following an in-depth proceeding that established these CLEC services as competitive. The board also took the wise and measured step of revising its general regulatory framework concerning telecommunication services found at N.J.A.C. 14:10. In many instances revising and paring back unnecessary and counterproductive regulation and the board continues that process with N.J.A.C. 14:10 as we know. In short, the board and staff have worked diligently to strike the proper balance between competition and regulation and it demonstrated a laudable commitment to permit competition to discipline this very competitive marketplace. (ATT)

RESPONSE: The Board appreciates this comment in support of the rules.

14. COMMENT: We support the readoption of Chapter 3 and commend the Board for many of the proposed amendments which provide additional clarity and understanding. (SJG-W)

RESPONSE: The Board appreciates this comment in support of the rules.

15. COMMENT: The proposed rules may involve system programming changes that may not be able to be accomplished at once and which may involve costs. At this time, we cannot identify all the provisions that may implicate system programming changes and, consequently cannot state with certainty the level of associated costs. We request that the Board provide a reasonable amount of implementation time, as well as the opportunity to recover the incremental costs associated with system programming changes related to the implementation of N.J.A.C. 14:3. (ETG)

RESPONSE: The commenter has not specified the system programming changes it foresees. To the extent that a utility expends funds prudently in order to comply with these rules, the utility can petition the Board for recovery of these costs.

16. COMMENT: The Economic Impact section states that the repeals and new rules are not likely to have a significant economic impact. The Jobs Impact section states that any staff needed for compliance will already be in place as the rules have been in effect for some time. However, some of the changes could have profound impacts on regulated entities, either due to massive new investments needed or many new employees needed. We suggest that the conclusions in these summary sections be given closer scrutiny, and the necessary cost-benefit analysis some of the proposed changes invite be undertaken before the impact is dismissed. (NJAW)

RESPONSE: The commenter has not specified the source of the economic impacts it foresees. To the extent that a utility expends funds prudently in order to comply with these rules, the utility can petition the Board for recovery of these costs.

17. COMMENT: A great number of the proposed changes that are characterized as "rephrasing and reorganization for clarity and ease of understanding, the substance of these provisions is unchanged" or "with no change in meaning." These statements are used in the summary section of the rule proposal to describe a wide range of changes, some of which are innocuous and for which the phrases are accurate. However, there are changes to the rules that are described as non-substantive that in fact are major in nature and consequence, and which may have unintended consequences that we have not yet been able to analyze and bring forward in these comments. To the extent that further comments are needed, or more examples of serious changes due to "rephrasing and reorganization for clarity" are found, we request that any further submissions that we make on this matter receive review and consideration by the Staff of the Board. (NJAW)

RESPONSE: Any person may submit comments on rules at any time, and staff will carefully consider all comments received.

SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

18. COMMENT: In the definition of "Normal business hours" there is a reference to New Jersey State holidays. There should be a reference to a listing or definition of "New Jersey State holiday," should a dispute arise over whether or not a particular day is a holiday or not. The same comment also applies to N.J.A.C. 14:3-3A.1(c). (NJAW)

RESPONSE: Please see the response to comment 20 below.

19. COMMENT: The definition for "Normal Business Hours" should be clarified to state that this applies to customer service activity. (NJUA) (ACE) (EDCs)

RESPONSE: Please see the response to comment 20 below.

20. COMMENT: The proposal would change "Normal business hours" from 9:00 A.M. to 5:00 P.M. to 9:00 A.M. to 4:30 P.M. This reduces the time during which a utility is required have representatives available by telephone to discuss non-emergency matters with customers and the Board. The proposal does not state any justification for this reduction in the utilities' customer service obligations. "Normal business hours" should remain at the current 9:00 A.M. to 5:00 P.M. (RC)

RESPONSE: This definition was not intended to apply only to business hours kept by utilities. Rather, this definition was intended to delineate the hours that most businesses in New Jersey are open, in order to ensure that utilities keep normal hours. In light of these comments, and further review by Board staff, the Board agrees that the definition requires modification. However, such modification would constitute a substantive change and thus cannot be made upon adoption. Therefore, the Board has proposed amendments to this definition in a companion proposal in this issue of the New Jersey Register.

21. COMMENT: The definitions of “electric public utility” and “gas public utility” include a cross-reference to another definition, “Public utility,” and that definition in turn contains a cross-reference to the statutory definition of “public utility” in N.J.S.A. 48:2-13. We recommend that both definitions be re-written to eliminate the intermediate cross-reference, and to track more closely the language of N.J.S.A. 48:2-13. We suggest the following language, patterned on the Board’s existing definitions for “Water utility,” “Wastewater utility” and “Telephone utility”: “Electric public utility” means a public utility, as defined in N.J.S.A. 48:2-13, which provides electric distribution service. “Gas public utility” means a public utility, as defined in N.J.S.A. 48:2-13, which provides gas service. (RC)

RESPONSE: The definitions, as proposed and adopted, provide more accurate and easily accessible meanings for these terms than the definitions suggested by the commenter. First, the definition of “public utility” that is cross-referenced in each definition is found in the same rule section as the definitions themselves, thus sparing the reader the need to go to a separate source to find the full definitions. Second, the definition of “public utility” in the rules is more accurate than the commenter’s suggested revision, as it omits several items which are included in the statutory definition but over which the Board no longer has jurisdiction, including railroads, street railways, traction railways, autobuses, charter bus operations, special bus operations, canals, expresses, subways, solid waste collection, solid waste disposal and telegraph systems. Therefore, the suggested change has not been made.

22. COMMENT: All references to telephone utility should be changed to telephone service provider and that term should be defined as “any person or entity providing telecommunications service in the State of New Jersey and subject to the regulation of the Board.” (MBQ)

RESPONSE: The Board does not believe that this change would clarify the rules, and therefore has not made the suggested modification upon adoption.

23. COMMENT: N.J.A.C. 14:3-1.2(d) contains a reference to “an informal complaint.” Formal and informal complaints should have definitions and procedures which are uniform for all utilities. A formal dispute should be defined in the regulations as a customer request for a hearing, accompanied by the appropriate filing fee, that generates a letter from the Board’s Secretary to the utility, at the utility’s address for service of process, notifying the utility of the complaint and request for hearing, the docket number, and time for providing an answer-to the Board. An informal complaint

should be defined as a written (i.e. mail, fax, email, or electronic data interface/EDI) complaint, received from a customer by the Staff of the Board and sent from Board Staff to the contact unit designated by the utility for receiving such communications. Informal complaints should have tracking numbers and some other form of date/time designation so that the Staff and the receiving utility both know when the informal complaint was filed. (NJAW)

RESPONSE: Formal and informal complaints do have the definitions and procedures requested by the commenter. They are found in N.J.A.C. 14:1, which is cited in the provision discussed by the commenter.

24. COMMENT: N.J.A.C. 14:3-1.2(d) provides that any person having a dispute with a utility may file an informal complaint with the Board in accordance with N.J.A.C. 14:1-5.13. This provision should also state that a person may also file a petition requesting a formal hearing under N.J.A.C. 14:1-5.1. (RC)

RESPONSE: The option of filing a formal petition has been added upon adoption.

25. COMMENT: N.J.A.C. 14:3-1.3(a) should require that electronic copies of all tariff filings be provided to Rate Counsel. Since the Board has recently proposed to amend N.J.A.C. 14:1-4.2 to require the submission of electronic copies of all pleadings, including tariff filings, electronic copies of all tariff filings could be provided to Rate Counsel without any significant additional burden on the utilities. (RC)

RESPONSE: The commenter is correct that the Board has adopted rules at N.J.A.C. 14:1-4.2, requiring an electronic copy of all filings (see the April 7 issue of the New Jersey Register), unless otherwise directed by the Board. Adding Rate Counsel to the electronic distribution list will impose virtually no burden on utilities and will improve Rate Counsel's ability to fulfill its mandate to advocate for ratepayers. Therefore, the rule has been modified accordingly upon adoption.

26. COMMENT: N.J.A.C. 14:3-1.3(c)2 regarding toll services should be deleted in its entirety given that toll service has been deemed competitive in New Jersey. (MBQ)

RESPONSE: N.J.S.A. 48:2-21.19 states that the Board shall not regulate, fix or prescribe the rates, tolls, charges, rate structures, terms and conditions and cost of service of competitive services, but it may require the local exchange telecommunications company or interexchange telecommunications carrier to file and maintain tariffs for competitive telecommunications services. The Board has chosen to exercise this authority for the benefit of telephone subscribers.

27. COMMENT: Proposed new N.J.A.C. 14:3-1.3(d) states that each utility shall operate in accordance with its tariff at all times, unless specifically authorized in writing by Board Staff to do otherwise (emphasis supplied). This apparently would give Staff unlimited discretion to excuse utilities from complying with their filed tariffs, without participation by, or even notice to Rate Counsel, the rate paying public, or other interested parties; rather than through an open, public process in which Rate Counsel and other interested parties are entitled to participate. If this provision were adopted, utility consumers would no longer be able to rely on a utility's filed tariff as a

legally binding document. We urge the Board not to adopt proposed N.J.A.C. 14:3-1.3(d). (RC)

RESPONSE: The rule has been clarified to indicate that the permission required under this provision could only be granted by the Board, and cannot be granted by Board staff acting without the full Board's approval.

28. COMMENT: Proposed N.J.A.C. 14:3-1.3(e) requires the filing of four copies of an off-tariff rate contract or agreement. We support this provision as it applies to telecommunications utilities, and further suggest that copies be provided to Rate Counsel, which should have the opportunity to review off-tariff rate agreements. (RC)

RESPONSE: Due to the emerging competitive nature of the telecommunications industry, requiring telecommunications companies to provide copies of all contracts they negotiate with individual customers is not necessary, and would create a significant administrative burden for utilities.

29. COMMENT: For water, wastewater, electric and gas utilities, we oppose proposed N.J.A.C. 14:3-1.3(e). For water and wastewater utilities, the practice has been to include all rates in the utility's tariffs, which have been subject to change only as part of base rate proceedings. For electric and gas utilities, the Board has permitted special rates for a particular customer only after proceedings in which Rate Counsel has participated, and approval in a Board Order, in accordance with "rate-flex" legislation at N.J.S.A. 48:2-21.22 to -21.27. This streamlined procedure applied only to electric utilities, and the Board's authority to follow that procedure expired in 2002. The Committee Statement that accompanied this legislation states that "[a]n off-tariff rate agreement entered into after that seven year period would not be authorized by the act and would be subject to current standards and procedures." Moreover, the Board's current proposal provides fewer procedural protections than applied under the rate-flex legislation. Water, wastewater, electric and gas utilities should not be permitted to implement special rates for specific customers without approval in a Board Order, following contested proceedings with full participation by Rate Counsel and other interested parties. (RC)

RESPONSE: For water, wastewater, electric and gas utilities, the Board has proposed, in a companion proposal in this issue of the New Jersey Register, to require prior Board approval of a contract or agreement subject to this section through a petition, so Rate Counsel would be provided a copy as part of the filing. However, in many instances, an individual utility's tariff, approved by the Board through a rate case filing, allows the utility to negotiate rates with certain customer classes. This would be unique to the rate class and to the utility company, and would have been subject to full review by the parties and Rate Counsel. In such a case, N.J.A.C. 14:3-1.3(e) and (f) would not apply because the rate in the contract or agreement would be authorized under the tariff. This has been clarified by the use of the term "authorized under" to replace "provided in" at N.J.A.C. 14:3-1.3(e). This mechanism is very important to allow crucial flexibility, especially for water utilities. Typically, water utilities must enter into this kind of contract due to a buyer's need for quick access to water, usually to meet a directive from the Department of

Environmental Protection to address a contaminated drinking water supply. Furthermore, the Board-approved rates in effect for other customers do not change when such a contract is filed. During a subsequent rate proceeding, Board staff and all the parties review the revenues and costs associated with the contract—it is at this time that the Board will determine whether the contract will effect the utility's rates for other customers. Requiring a full petition and corresponding proceeding every time such a contract is filed would render the contract useless for its intended purpose, and would impose burdensome restrictions on water utilities that would not result in additional protection for other ratepayers.

30. COMMENT: N.J.A.C. 14:3-1.3 provides that all utilities, apparently including telecommunications carriers, should file with the board four copies of any contracts or agreements that include off-tariff rates at least thirty days prior to the effective date of the agreement or contract. There is no reason to extend this requirement to the highly competitive telecommunications business. Any customer large enough to negotiate its own rates, terms, and conditions with a telecommunications provider does not need the board's protection. Those customers are well aware of the multitude of service options available to them in New Jersey and are equally aware of the considerable leverage they have to negotiate favorable prices and terms of services. Requiring telecommunications carriers to file contracts they negotiate with large customers would create an administrative burden for the carriers and would risk exposure of customer-specific information which businesses would prefer to shield from public disclosure, particularly high technology firms that use telecommunications to gain competitive advantage in their own markets. We have no objection to a requirement that carriers be prepared to make individual case contracts available for an ad hoc review upon request of the board staff, as is the practice in a number of other states, but there is no need to require carriers to file every contract and certainly no need to impose such an obligation on the CLECs, which the board recently found to have no market power. (ATT)

RESPONSE: Please see the response to comment 31 below.

31. COMMENT: N.J.A.C. 14:3-1.3(e) and (f) would impose additional regulatory requirements for filing of off-tariff rate agreements. Indeed, the proposed new rules envision a "detailed statement" at subsection (f) which is inappropriate and unnecessary when competitors of telephone utilities do not have to provide such detailed information. Proposed subsections (e) and (f) should explicitly exempt telephone utilities. Moreover, N.J.A.C. 14:3-1.3 altogether should expressly exclude services that may be designated as competitive in the ILEC Reclassification proceeding. (MBQ)

RESPONSE: The detailed statement required by this provision is necessary so that the Board can adequately evaluate whether and how the agreement could affect other ratepayers. In the case of telecommunications service providers, the Board agrees that making individual case contracts available to the Board Staff upon request should be sufficient to meet the intent of the provision. However, this change is substantive and therefore cannot be made upon adoption. Accordingly, this

modification is found in a companion proposal of amendments to N.J.A.C. 14:3, published in this issue of the New Jersey Register.

32. COMMENT: The requirement for public access to tariffs at proposed N.J.A.C. 14:3-1.3(h) should be expanded, in light of advances in information technology. First, copies of a utility's tariffs should be available for inspection at all offices at which utilities transact business with customers, even if the utility does not take applications for service at that location. The State's seven electric and gas utilities all have their tariffs available on the Internet. We recommend that all utilities that have websites be required to post their tariffs on their websites. (RC)

RESPONSE: The Board agrees that posting of tariffs on the web would be beneficial to the public, and would impose virtually no additional burden on any utility that maintains a website. Therefore, the rule has been modified upon adoption to require utilities with websites to post their tariffs.

33. COMMENT: Proposed N.J.A.C. 14:3-1.4 would require utilities to provide all notices, information and reports "in the format provided by Board staff and/or posted on the Board's website." In order to be fair to all utilities, and to assure that information is provided in useful format by all utilities, filing requirements should be published and applied in a uniform, non-discriminatory manner. This could be accomplished by requiring that all format requirements be posted on the Board's website. In order to assure that waivers of the format requirements are granted on a consistent basis, communications granting waivers also should be posted on the Board's website. (RC)

RESPONSE: The Board has not adopted the section to which the commenter refers. Given the number and variety of forms and notices required by the Board's different divisions and offices, the Board has determined that a web posting of each is likely to prove more labor intensive than is justified by its likely benefit. All required forms are available from Board staff upon request, by calling the appropriate Board Division.

SUBCHAPTER 2. PLANT

34. COMMENT: The change in N.J.A.C. 14:3-2.1(b) to remove the phrase "shall make reasonable efforts" regarding utility property protection would set a standard that would be impossible to achieve. We ask that the Board retain the "reasonable effort" benchmark or provide another similar benchmark rather than a requirement to prevent damage "of any kind" at any cost or effort whether reasonable or not. If the Board believes that current efforts are not sufficient, we would like the opportunity to understand better the Board's concerns, as they are not stated in the readoption, and have the opportunity to respond to specific issues. (NJUA) (ACE) (EDCs)

RESPONSE: The Board agrees that the standard as proposed is unachievable. Therefore, the rule has been modified upon adoption to restore the "reasonable effort" standard.

35. COMMENT: We are concerned by N.J.A.C. 14:3-2.1(d)-(f) which set forth the rules for extensions of service. We request that these provisions be consistent with the Smart Growth Rules and the National Electric Safety Code, not the Uniform Construction Code which does not apply to utility construction. The Smart Growth Rules would give the utility the right of first refusal for this type of work and ensure that qualified union labor, whether employed by the EDC or a contractor, performs the work. This will help to maintain reliability and operational integrity for electric service extensions. (NJUA) (ACE) (EDCs) (PSEG)

RESPONSE: The rules do not require that construction of extensions comply with the Uniform Construction Code (UCC). The only reference in chapter 3 to the UCC is in N.J.A.C. 14:3-2.3(b), which requires that replacement poles or equipment placed on poles comply with the UCC. Further, it is not necessary that the utility construct an extension in order to maintain reliability and operation integrity of extensions. Even if an applicant for an extension constructs the extension, the applicant must meet the utility's system standards. Otherwise, under N.J.A.C. 14:3-8.3(g), the utility may refuse to connect the extension to its system.

36. COMMENT: In N.J.A.C. 14:3-2.1(d)2iii, *after* the word "extension" add the phrase "either at the time of application or in the future" (NJAW)

RESPONSE: The Board has made the suggested clarification upon adoption, and has also added this clarification to a similar provision at N.J.A.C. 14:3-2(f)2iii(C).

37. COMMENT: N.J.A.C. 14:3-2.1(d), Plant Construction, allows an applicant to install cable services and equipment for extension of electric service. This type of work has historically been performed by union workers on our property. A fairly large union issue would arise here. (PSEG)

RESPONSE: The cited provision, as proposed and adopted, does not apply to installation of an extension on property owned by the utility, but only to installation of the portion of the extension that is located on the property to be served by the extension.

Ownership and maintenance of underground extensions after construction:

38. COMMENT: N.J.A.C. 14:3-2.1(d), (e) and (f) include changes that could be interpreted as making non-utility entities responsible for maintaining facilities located within public rights-of-way. When such facilities require maintenance, utilities are able to obtain access under the terms of their Board-approved municipal consents to operate within public rights-of-way. For a private citizen or non-utility business, access to such facilities would be problematic. We do not believe the Board intended to make non-utility entities responsible for maintaining facilities located within public rights-of-way. (RC)

RESPONSE: First, it should be noted that N.J.A.C. 14:3-2.1(d) and (e) do not address ownership or maintenance of underground extensions, but apply only to construction of such extensions. See the response to comment 37 above for a discussion of construction of extensions. Second, N.J.A.C. 14:3-2.1(d)2ii, as proposed and adopted, already addresses the commenter's concern by clearly stating that the utility shall own and maintain water or wastewater infrastructure that

is located in a right-of-way. This has been clarified further upon adoption by the addition of the phrase "roadside utility" prior to the term "right-of-way" in the introductory language of N.J.A.C. 14:3-2.1(d)2.

39. COMMENT: It is unclear how proposed N.J.A.C. 14:3-2.1(f)2 would apply in a situation when the applicant for service is the developer of a large parcel on which many homes will be built. "Extension" includes all facilities built to extend service from the utility's existing facilities. For a large development, the regulation could be interpreted as meaning that the developer (which could be considered as the "applicant for service") would become responsible for owning and maintaining the entire system of mains and service lines constructed to serve the entire development (which could be considered to be the "property" served by the extension). We recommend that this provision make it clear that "property" refers to an individual property served by the extension, and that property owners are responsible for maintaining only underground water and wastewater lines located on their own properties and serving only the structures on their properties. To clarify this, we recommend the following changes to the introductory language of (f)2:

2. For an extension of water or wastewater treatment service, the applicant for the extension the owner of each individual property receiving service shall own and maintain the entire extension serving that property. The utility shall own and maintain all facilities located within public rights-of-way, and shall own and maintain the water meter and any of the following that are located on the right-of-way within a utility-owned easement on of the property to which service is being provided: (RC)

RESPONSE: First, it should be noted that, for water and wastewater treatment extensions, certain pipes and other infrastructure on a residential lot between the curb and the meter are not part of the extension. (See the definition of "extension" in N.J.A.C. 14:3-8.2.) Therefore, under the rules as adopted, the property owner in a development would own this infrastructure upon completion of construction, and could transfer ownership of each lot's infrastructure to the buyer of the lot. Under N.J.A.C. 14:3-8.5(b), the utility would own the remainder of the extension. A cross reference has been added at N.J.A.C. 14:3-8.5(b) to clarify the relationship between that provision and N.J.A.C. 14:3-2.1(f).

40. COMMENT: N.J.A.C. 14:3-2.1(f)2ii-- the inclusion of fire hydrants in this section appears to eliminate the option of privately owned fire hydrants for some extension projects. If this was intended, these hydrants will become the responsibility of the municipality in which they are located, including the annual costs, which are currently borne by the end user or private property owner. These additional costs may not be expected by municipalities. (NJAW)

RESPONSE: N.J.A.C. 14:3-2.1(f)2ii has been clarified to specify that, in the case of a municipality that maintains an inventory of public hydrants, the municipality may choose to assume responsibility for a hydrant constructed on private property. In addition, 2ii clarifies that the rule will not apply retroactively to remove a previously installed extension from utility ownership, a cross reference has been added, and paragraph 2 has been rephrased and reorganized for easier understanding.

41. COMMENT: N.J.A.C. 14:3-2.1(f)4 requires an electric public utility to “own and maintain” an underground service in an overhead zone to a one -, two -, or three family residence. In some service territories, these installations are constructed by the customer at their expense and therefore are owned by the customer. The utility assumes the maintenance of them as stated in the tariff. Accordingly, we recommend that the words “own and” be deleted from this paragraph. In addition we recommend adding the following words at the end of the paragraph: “unless the applicant or property owner and the utility make other arrangements.” (EDCs)

RESPONSE: The Board believes that the utility should own and maintain these small residential lines in order to protect public safety. Furthermore, all but one of the electric public utilities in New Jersey own these lines, in accordance with their Board-approved tariffs. The vast majority of utility lines currently being constructed on customer property are also owned by the utility under N.J.A.C. 14:3-8.5(b), which requires utilities to own extensions after completion of construction. While these lines may be paid for or installed by the customer or its agent, this does not mean that ownership or the responsibility for maintaining the lines should rest with the residential customer. It is not clear what advantage would be gained by vesting ownership in utility lines in the property owner while requiring the utility to maintain them. Therefore, the commenter’s suggested changes have not been made.

42. COMMENT: N.J.A.C. 14:3-2.1(f)5 would allow utilities to negotiate agreements with an applicant for service or a property owner that the utility will maintain an underground extension, with no provision for review by the Board. As a result, the costs of maintaining large underground extensions could be shifted to a utility’s other ratepayers. If a utility agrees to maintain an underground extension that would otherwise be the responsibility of the applicant or the property owner, the agreement should require the applicant or property owner to pay the costs of maintaining the extension. The terms of all such agreements should be subject to review and approval by the Board, following proceedings in which Rate Counsel is a party. As an alternative, the Board could review and approve a standardized agreement or agreements, with input from Rate Counsel. (RC)

RESPONSE: Please see the response to comment 43 below.

43. COMMENT: N.J.A.C. 14:3-2.1(f)5 requires that an extension of electric service shall be owned and maintained by the applicant or the property owner. Part of the extension could include transformers, which are capitalized upon purchase by us. Having another party directly tapped onto the distribution system would create safety and reliability issues. To ensure employee and public safety, as well as reliability, transformers must be owned and operated by the utility. (PSEG)

RESPONSE: The Board agrees that this provision could cause unintended and unacceptable consequences. As noted in comment 42, utility ownership and maintenance of a non-residential, underground extension of electric service on private property could result in significant subsidization of commercial and industrial extensions by ratepayers. In addition, underground extensions of electric service on private property may include high-voltage and/or complex electrical equipment, such

that private maintenance of such extensions could result in significant safety risks to property owners, electrical contractors and the public. Finally, there are potential access problems that may arise in some cases but not others. Based on a review of its records, Board staff have found that the utilities and their non-residential customers have successfully worked out ownership, access and maintenance issues on a case-by-case basis in the past, and that such flexibility should continue. Therefore, N.J.A.C. 14:3-2.1(f)5 has been removed from the rule upon adoption.

44. COMMENT: The reference to “wastewater treatment” service in proposed N.J.A.C. 14:3-2.1(f)2 is too narrow, as wastewater utilities typically provide both collection and treatment. (RC)

RESPONSE: The definition of “wastewater treatment” is found at N.J.A.C. 14:9-1.2, and includes all related activities including the collection of wastewater. A cross-reference to the definition has been added upon adoption.

45. COMMENT: Identification of utility equipment - The proposed modification to N.J.A.C. 14:3-2.5 includes the expanded requirement that each utility must now mark “each piece of equipment that it owns, solely or jointly, which is not permanently located at a utility office, maintenance yard, storage facility or similar installations.” We maintain digital maps and drawings of our distribution and transmission facilities that include the current nomenclature necessary to satisfy the National Pipeline Mapping System requirements. Requiring natural gas companies to now identify above and below ground gas facilities with a new identification system is unreasonable and will require the revision of office records. Additionally, requirements concerning the identification of natural gas facilities are clearly defined in Federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) Safety Regulations at 49 C.F.R. 192.707 and satisfy any related safety requirements. Accordingly, this amendment is unnecessary, could result in conflicting markings of equipment and, if implemented, would require considerable investments of time and money by the utilities, translating into a ratepayer expense that will provide no benefit to the Board, gas utilities and their customers. For those reasons, we suggest that the Board not extend the application of N.J.A.C. 14:3-2.5 to New Jersey’s gas utilities, or alternatively, state that compliance with 49 C.F.R. § 192.707 by a gas utility constitutes satisfaction with the marking requirements. (SJG-W) (NJNG) (ETG)

RESPONSE: The Board agrees that the federal provisions for identifying utility equipment satisfy the requirements of the rule’s marking provisions, and has so specified upon adoption at N.J.A.C. 14:3-2.5(b). Regarding the other issues raised by the commenters, please see the response to comment 46 below.

46. COMMENT: N.J.A.C. 14:3-2.5 has been modified to include all “aboveground or underground pipes,” which were not previously covered by this section. First, the section does not exempt equipment already in service, apparently requiring that we excavate buried main so it can be marked for identification and reinstalled. Even assuming that the proposed change only applies to new equipment, the requirement that all pipes be marked poses considerable new burdens on utilities. In the case of underground pipe, there is no indication as to how frequently the markings must be

repeated (i.e. the spacing between the markings) or if there are any size limitations below which markings are not required. Furthermore, utilities acquire materials that are essentially generic commodities, and requiring the markings will require extra work by utility employees, contractors or vendors at additional cost. This proposed change should be removed entirely or substantially rewritten. (NJAW) (NJUA) (ACE) (EDCs)

RESPONSE: Based on the comments received on this section, the Board agrees that several modifications are necessary. First, the commenter is correct that this requirement was not intended to apply retroactively, and this has been clarified upon adoption at N.J.A.C. 14:3-2.5(a). In addition, the section lacks specificity in terms of the number and spacing of markings, and the exact types of equipment that must be marked. Many of the necessary changes would be substantive. Therefore, the Board has adopted the section, and has proposed amendments in this issue of the New Jersey Register in order to incorporate the necessary changes. In addition, N.J.A.C. 14:3-2.5(c) is relocated to N.J.A.C. 14:3-2.5(h) in order to simply recodification necessitated by the addition of (b), with no change in text.

SUBCHAPTER 3. SERVICE

47. COMMENT: Portions of subchapter 3 define portions of water utility plant in a way that is not as clear as intended. We suggest the following: Water Utility Plant-production, transmission and distribution facilities; service connections (connection to the distribution system, curb stop/shutoff valve, service line), hydrants, meters; Customer Facilities - typically the facilities located entirely on private property that connect the customer/end user to the utility system. (NJAW)

RESPONSE: It is not clear to which portions of chapter 3 the commenter refers. The Board does not believe that the components included in the commenter's suggested definition (that is, "water utility plant" and "customer facilities") are treated differently from each other in the rules. Therefore, the distinction made by the commenter's suggested language is not necessary, and the change has not been made.

48. COMMENT: The deletion of the former N.J.A.C. 14:3-3.2(c) appears to acknowledge the fact that residential private fire service is provided at no cost by water utilities. However, it is inconsistent with the proposed changes in N.J.A.C. 14:3-3A.4(j). (NJAW)

RESPONSE: Please see the response to comment 132 below regarding N.J.A.C. 14:3-3A.4(j).

49. COMMENT: Proposed N.J.A.C. 14:3-3.2(e) and (f) would eliminate some of the documents a utility is required to accept from an applicant for service as proof of identity. Many of the documents eliminated are those that are more accessible for the State's economically disadvantaged residents. While both provisions allow utilities to accept other documents, acceptance of other documents would be entirely at the utility's discretion. The deleted items should be restored. (RC)

RESPONSE: The proposal erroneously omitted three forms of identification from this list (county identification card, county welfare identification card and student identification card). As described in the proposal summary at 39 N.J.R. 4078, the only deletion intended on proposal was the removal of the mandate that utilities accept a recent mailing envelope as proof of prior address. The omissions have been corrected upon adoption by the restoration of these three types of identification. In addition, an amendment is proposed to this section in this issue of the New Jersey Register, to add a mandate that utilities accept a New Jersey State-issued identification card as proof of identity.

50. COMMENT: The regulations regarding deposits for service include a provision requiring that requests for deposits be based on non-discriminatory standards that apply throughout a utility's service territory. Similar provisions should be added to proposed N.J.A.C. 14:3-3.2(e) and (f) regarding utility requests for proof of identity and address. (RC)

RESPONSE: The requirement that a utility provide non-discriminatory service applies not only to deposits but to all aspects of service. Therefore, the rule has been modified upon adoption to emphasize this requirement. First, this has been stated in the provisions regarding the utility's general duty to provide service at N.J.A.C. 14:3-3.1(a). Second, the word "routinely" has been deleted upon adoption from N.J.A.C. 14:3-3.4(g), to prevent a utility from circumventing the prohibition against discrimination by selectively requiring a deposit or the establishment of credit. Third, N.J.A.C. 14:3-3.4(g) has been modified upon adoption to require that any utility that requires a deposit or requires that a customer establish a credit record post their credit and deposit requirements on their website. This will impose virtually no burden on utilities but will provide an important tool to enable Board staff and the public to ensure that the utility does not apply discriminatory credit and deposit requirements.

51. COMMENT: N.J.A.C. 14:3-3.2(h) – This provision should be removed or, at a minimum, clarified to permit a utility to request the information as long as it is not made a condition of service. We do not require social security numbers as a condition of providing service, but we do use them to verify credit and fraudulent activity of current and future customers. There may be certain limited instances where the use of a social security number is necessary to avoid potential theft of service or fraudulent applications for service. Accordingly, we suggest that the proposal be amended (shown in bold) to read as follows:

(h) A utility shall not require a social security number as a condition of providing service, **unless the utility has reason to believe that there is fraud in the application for service.** (NJNG) (ACE) (PSEG)

RESPONSE: The use of social security numbers may expose applicants for service to identity theft problems. Furthermore, the Board does not believe it is necessary for a utility to obtain social security numbers in order to protect against fraud. Should a utility suspect fraud, N.J.A.C. 14:3-3.2(f) authorizes the utility to require proof of prior address. Therefore, the suggested change has not been made.

52. COMMENT: Proposed N.J.A.C. 14:3-3.3(b) requires utilities to provide their customers with the “Customer Bill of Rights” no later than the customer’s first bill or 30 days after the initiation of service, whichever is later. This provision should be amended to require utilities to provide all customers with a copy of the “Customer Bill of Rights” no later than the time of the first billing, or 30 days after service is initiated, whichever is earlier. Customers who apply for service in person can be provided with a copy of the “Customer Bill of Rights” at the time they apply. For customers who request service by telephone, the utility should mail a copy of the “Customer Bill of Rights” within a day or two of the telephone call. (RC)

RESPONSE: Most of the potential problems addressed in the customer bill of rights arise in the context of billing. Therefore, providing a customer with the customer bill of rights prior to receiving the first bill for service would be of little benefit. In addition, requiring the utility to initiate a separate mailing within a few days of an application for service will place an administrative burden on the utility, which is not justified by the minimal potential benefit. Under the rules as proposed, the utility can include the customer bill of rights with the first bill rather than initiate a separate mailing. Finally, the commenter’s suggestion would result in the utility mailing to all applicants, even though a number of applicants do not ultimately receive service. For these reasons, the suggested change has not been made.

53. COMMENT: Proposed N.J.A.C. 14:3-3.4(c) leaves it within the utility’s discretion to change the amount of a deposit that is subsequently determined to have been either too low or too high. This protects the utility in the event a deposit proves to be too low, but it does not provide similar protection for a customer whose deposit is too high. N.J.A.C. 14:3-3.4(c) should require a refund, with interest, in the event a deposit is determined to have been too high. (RC)

RESPONSE: N.J.A.C. 14:3-3.5(a) requires a refund, with interest (see N.J.A.C. 14:3-3.5(d)), once a year (once every two years for non-residential accounts). The Board believes that this provides sufficient protection for customers, and also allows the utility to assess a customer’s usage across a full year prior to evaluating whether a deposit is excessive. In a case where a customer feels that a deposit is clearly unreasonable, the customer can complain to the utility and the Board, and the matter can be handled on a case-by-case basis with the assistance of Board staff.

54. COMMENT: N.J.A.C. 14:3-3.4(h) includes an amendment which will require utilities to inform customers the interest rates they will be paid on deposits. The regulations provide for customers to receive interest at a rate established and made effective January 1st of each year, and when deposits are held during times where different interest rates apply, the interest must be apportioned to reflect the amount of time the deposit was held under each rate. Since deposits are received during all times of the year and are usually held for at least one year, the result is that deposits earn different interest rates during the period they are held by the utilities. Therefore, at the time the company receives a deposit, it will in most instances be impossible to quote with certainty the actual interest rates customers will receive on their deposits. We’ve received very few inquiries or complaints relative to the interest paid on customer deposits. As an alternative, we suggest the following language for N.J.A.C.

14:3-3.4(h): "When a utility requires a customer deposit for service, the utility shall inform the customer of the interest rate in effect at the time of the deposit request. The utility shall also describe the method of calculating interest on the deposit."

(SJG-PH) (SJG-W)

RESPONSE: The commenter is correct that it would be impossible for the utility to predict the interest rate beyond the calendar year in which the deposit is established. Therefore, N.J.A.C. 14:3-3.4(h) has been modified to require only that the utility provide the interest rate at the time the deposit is established.

55. COMMENT: N.J.A.C. 14:3.4 and 3.5: The deposit refund rules are too detailed and require too much administrative upkeep. They don't provide a lot of benefit to customers but do impose undue burdens on utilities. These rules should not be applied in the robustly competitive telecommunications industry. The current rules should be updated and simplified, consistent with the Board's approach with N.J.A.C. 14:10. (ATT) (VZ)

RESPONSE: The Board's experience has been that the deposit refund rules not only benefit customers, they provide an important incentive to utilities to ensure that deposits are only required when necessary, and are not excessive in amount. Furthermore, as discussed in the response to comment 10 above, marketplace competition standing alone does not in and of itself eliminate the need for regulation, especially in basic customer protection issues.

56. COMMENT: N.J.A.C. 14:3-3.4(i) – We do not issue a receipt for a deposit made and received via mail. Instead, deposits are displayed on a customer's bill. To date, we have not experienced any problems with this policy. Therefore, this provision should be clarified to require a receipt only when a deposit is made in person at a local office and/or is requested by a customer. (ACE) (PSEG)

RESPONSE: The Board has clarified the rules upon adoption to indicate that, in cases where the deposit is not paid in person (i.e., when it is paid by mail, internet or telephone), displaying the deposit on the next bill will constitute compliance with the requirement to provide a receipt.

57. COMMENT: Existing N.J.A.C. 14:3-7.1(a), which was not included in this proposal, requires a utility to provide the customer with an opportunity to establish credit, in accordance with methods that must be disclosed to the customers, before it may require a deposit as a condition of supplying service. Although utilities would be required to apply the same credit and collection standards throughout their service territories, they would not be required to disclose those standards to their customers. The language that presently appears in N.J.A.C. 14:3-7.1(a) should be included in the rules. (RC)

RESPONSE: The proposal erroneously omitted the requirement found in the former rules at N.J.A.C. 14:3-7.1(a). As described in the proposal summary at 39 N.J.R. 4081, the proposal was intended not to change the meaning of this provision. For a discussion of the modifications that have been made upon adoption to correct this error, and related clarifications, see the response to comment 50 above.

- 58. COMMENT:** Proposed N.J.A.C. 14:3-3.5(a) requires each utility to review accounts and to refund the deposit if the review “indicates that the customer has established credit satisfactory to the utility” Utilities should be required to follow the same procedures when they re-evaluate the need for a deposit as they now follow when they open an account. If the customer establishes credit in accordance with those methods, the utility should be required to refund the customer’s deposit. (RC)
RESPONSE: The Board has modified N.J.A.C. 14:3-3.5(a) to clarify that a utility’s credit practices must be uniform and non-discriminatory, whether they are applied to an applicant for service or an annual review of a deposit amount.
- 59. COMMENT:** Proposed N.J.A.C. 14:3-3.5(b), which requires the refund of any remaining deposit, should make it clear that the refund must include interest. (RC)
RESPONSE: N.J.A.C. 14:3-3.5(b) and (d) have been modified upon adoption to clarify that interest must be paid on all deposits established under this chapter.
- 60. COMMENT:** Proposed N.J.A.C. 14:3-3.5(c), concerning cash refunds of deposits, eliminates the words “in lieu thereof,” and instead provides that the utility “may require the customer to surrender the receipt for the deposit, or may require proof of identity.” The new language could be read as allowing a utility to deny a cash refund to a customer who has misplaced the receipt. The deleted words should be reinserted. (RC)
RESPONSE: The Board did not intend to alter the meaning of this provision, but merely to simplify it (see proposal summary at 39 N.J.R. 4079). Therefore, the provision has been clarified upon adoption to indicate that the utility must accept either the receipt or proof of identity.
- 61. COMMENT:** N.J.A.C. 14:3-3.5(h) should be clarified to indicate that it is applicable only to customers who are in “good standing” in accordance with our credit guidelines. (ACE)
RESPONSE: N.J.A.C. 14:3-3.5(h) does not determine when or whether a refund or interest payment must be provided to a customer. It merely states that, in those cases when a utility refunds a deposit or pays interest, the utility shall give the customer a choice regarding the form of payment. The provisions that determine whether and when a utility must refund a deposit or pay interest are found at N.J.A.C. 14:3-3.5(a), (b) and (g). These provisions require a deposit refund and/or interest payment to the customer annually or biannually (N.J.A.C. 14:3-3.5(a)), upon closing an account (N.J.A.C. 14:3-3.5(b)), and annually for residential customers (N.J.A.C. 14:3-3.5(g)). Therefore, the suggested change is not necessary.
- 62. COMMENT:** The Board’s proposed new N.J.A.C. 14:3-3.6 would split previous N.J.A.C. 14:3-3.8(a), a single subsection defining the customer’s obligation to provide access to the utility to perform work on the customer’s premises, into three subsections. As revised, proposed (b) appears to create an obligation for customers to pay for access to facilities located within public streets. The Board should retain the existing format of N.J.A.C. 14:3-3.8(a), as well as the existing language in the

second sentence. In addition, the Board should delete the words “collection of coin boxes” as obsolete. (RC)

RESPONSE: The commenter is correct that the division of the previous provision into separate subsections inadvertently changed its meaning. N.J.A.C. 14:3-3.6(a) and (b) have been modified upon adoption to correct this error and to retain their previous meaning – that is, the customer is required only to provide access for facilities located on the customer’s premises.

63. COMMENT: We question whether additional provisions are needed given that existing N.J.A.C. 14:10 is adequate and, in fact, the proposed changes in N.J.A.C. 14:10 are unnecessary. Since N.J.A.C 14:10-1A.14 specifically addresses service interruptions for telecommunication utilities; telecommunications utilities should be exempt from the entire subsection of N.J.A.C 14:3-3.7, not just N.J.A.C. 14:3-3.7(d) through (f). (VZ) (MBQ)

RESPONSE: As discussed in the response to comment 10 above, marketplace competition standing alone does not in and of itself eliminate the need for regulation, especially in basic customer protection issues. The Board requires that all utilities adhere to these requirements in order to ensure that all utilities meet the same standards regarding key service protections such as consumer protection and security and reliability. Comments regarding the proposed changes to N.J.A.C. 14:10 are beyond the scope of this rulemaking, which covers only N.J.A.C. 14:3.

64. COMMENT: The time frame proposed in N.J.A.C. 14:3-3.7(d) is not reasonable and should be amended to read "the utility shall undertake all reasonable efforts to report the interruption to the Board within 30 minutes of the utility becoming aware that service has been disrupted for 30 minutes." N.J.A.C. 14:3-3.7(e) should also be amended in the same way. (NJAW)

RESPONSE: Please see the response to comment 65 below.

65. COMMENT: N.J.A.C. 14:3-3.7(d)1: We request that the notification of interruptions occur at a more operationally achievable level after one hour of interruption instead of 30 minutes and for a group of 30,000 customers instead of 10,000. During the initial stages of an interruption, the utility’s focus is to analyze an outage, assign appropriate personnel to confirm the outage, and to initiate restoration procedures so that service is restored as safely and quickly as possible. The proposed “trigger” would detract from the primary focus of diagnosing the problem and restoring service in this critical first hour window of response. The requirement to notify particular customers will pose a problem for those utilities that do not have all customers on a circuit identified. Unless technology such AMI is utilized, we need to rely on customer calls to determine an outage exists which makes the 30-minute trigger impracticable. We suggest that the notification clock start for these particular customers once the utility becomes aware of the customer’s outage by its system or the customer, whichever occurs first. (NJUA) (ACE) (PSEG) (EDCs)

RESPONSE: The intent of these provisions is to ensure that Board staff are aware of significant outage events in a timely manner, so that staff can monitor the

outage, assist the utility in responding promptly and appropriately, estimate the probable length of the interruption, and make effective and timely recommendations to the State Police and Office of Emergency Management. In addition, Board staff need basic information regarding the outage in order to respond appropriately to calls the Board will receive from customers affected by the interruption. The notice to the Board required under this provision should not impose a significant burden or require a delay in the utility's outage-response activities. However, the Board agrees that, because a utility generally does not know about an outage until a customer reports it, it may often be the case that a utility is not aware of an interruption until more than thirty minutes after the interruption begins, depending on the severity of the interruption, the number of customers affected, and other variables. In such a case it would be impossible for a utility to comply with the rules. In order to ensure that the deadline for notice is achievable, N.J.A.C. 14:3-3.7(d) and (e) have been modified upon adoption to require that the notification to the Board be made within thirty minutes after the utility becomes aware of the interruption. This will reduce the burden on the utilities to try to track every potential interruption, which could require unreasonable expenditures. However, to ensure that utilities continue to make a reasonable effort to monitor their systems to the extent practicable and report interruptions as promptly as possible, N.J.A.C. 14:3-3.7(a) is also modified upon adoption to emphasize that utilities must make reasonable efforts to be aware of interruptions and meet the reporting deadlines in the section.

- 66. COMMENT:** The facilities listed in N.J.A.C. 14:3-3.7(d) at times are not defined, which leaves utilities unable to determine whether or not this section applies. For example, "autobus" facilities are not defined, but the example given is Newark Pennsylvania Station. There is no reference to any guideline or other definition that could aid in determining what other facilities may fall under subsection (d). (NJAW)
- RESPONSE:** The Board agrees that N.J.A.C. 14:3-3.7(d)4 is impracticable, in that it includes broad, undefined terms that make it difficult to determine what constitutes compliance with the provision. Therefore, the provision has been replaced upon adoption with a clarified version, which specifically identifies what was meant in the proposal by the term "major transportation facility." Further, amendments are proposed to this provision in a companion proposal published in this issue of the New Jersey Register. The companion proposed amendments would further limit these interruptions by deleting buses, and by applying the provision only to interruptions that actually halt train traffic.
- 67. COMMENT:** N.J.A.C. 14:3-3.7(e)1 requires the reporting of state highway lane closures to the board staff. There are thousands of miles of state highways in New Jersey. In the majority of cases when electric utility emergency work is done generally it's the result of a pole hit, many of which occur at night, a lane of traffic has to be closed. The reporting of these lane closures to board staff appears to be an unnecessary reporting requirement and appears to serve no public interest. (PSEG)
- RESPONSE:** Please see the response to comment 71 below.

68. COMMENT: The inclusion of State highways in N.J.A.C. 14:3-3.7(e)1 would create duplicate reporting burdens as NJ DOT traffic operation centers are notified either by State Police or other such officials of lane closings. Given the thousands of miles of State highways, both large and small, current reporting is appropriate. (NJUA) (ACE) (EDCs)

RESPONSE: Please see the response to comment 71 below.

69. COMMENT: N.J.A.C. 14:3-3.7(f)3 contains "critical customers" for which there are no generally accepted definitions. This subsection should give utilities some idea as to what is meant by "large public institution, apartment complex, major commercial customer or large industrial customer." For example, for an apartment complex to be considered a "critical customer" it should be of a significant size (perhaps 20 apartments) and have a full time superintendent who can verify that the complex is entirely without water. A privately owned home subdivided into four apartments should not be considered an "apartment complex." (NJAW)

RESPONSE: Please see the response to comment 71 below.

70. COMMENT: The inclusion of "critical customers" under N.J.A.C. 14:3-3.7(f)3 would create increased reporting burdens and costs without a demonstrable benefit to these customers. Current Outage Management Systems are not designed for this type of reporting, and identifying those customers where an interruption "would significantly affect commerce or community functioning" is both vague and subjective. We request that either this paragraph be removed or that critical customers be limited to those that "have notified the EDC that they use or require life-sustaining equipment" as has been the previous definition of critical customers in the past. (NJUA) (ACE)

RESPONSE: Please see the response to comment 71 below.

71. COMMENT: N.J.A.C. 14:3-3.7(f)3 requires that interruption of service to a critical customer for more than two hours be reported to the board. The board's definition of critical customer includes apartment complexes, major commercial customers, and large industrial customers. We do not understand the reason for including these types of customers. For instance, in the heavily urban portion of our service territory there are literally thousands of apartment complexes, none of which are specifically identified in our outage management system. Likewise, we have over 300,000 commercial accounts, over 10,000 industrial accounts, and numerous large public institutions that we serve. To conform to this proposed paragraph would require an intensive review of all names of all the customers affected by each outage of two hours or more to determine if the interruption would significantly affect commerce or community functioning. This requirement does not serve the public interest and is not an appropriate use of utility resources. (PSEG) (EDCs)

RESPONSE: The Board agrees that N.J.A.C. 14:3-3.7(f)3 is impracticable, in that it is so broad as to make it extremely difficult for a utility to comply with the provision. Therefore, N.J.A.C. 14:3-3.7(f)3 has been deleted upon adoption. Regarding the other provisions N.J.A.C. 14:3-3.7(e) and (f), the commenters have raised many important issues, which are not susceptible to simple resolutions. The Board has

determined that substantial modifications to the rules may be necessary. However, under the Administrative Procedure Act, substantive changes may not be made upon adoption. Therefore, Board staff will conduct research into the many issues raised in the comments, and will consult with stakeholders, other state officials, and representatives of the regulated entities. Staff expects to accomplish this research and consultation within the next year, and will at that time determine whether further rule amendments may be needed. Any further amendments will be subject to a 60-day public comment period as required under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

72. COMMENT: In N.J.A.C. 14:3-3.7(g) and (i), phrases such as "promptly" and "forthwith" should be replaced with realistic, credible deadlines. For example, under (g), a utility could be required to advise the Board within 24 or 48 hours as to how long an investigation might take and when a "detailed written report" could be filed. (NJAW)

RESPONSE: Regarding N.J.A.C. 14:3-3.7(g), the time required for a utility to prepare a detailed written report of a service interruption will vary widely, depending on the reasons for the outage, the scale of the outage, and the utility's actions before, during and afterwards. Therefore, the rule must provide flexibility. These terms have been used in this provision for many years, during which Board staff have worked cooperatively and without significant problems with utilities that must comply with these requirements. Regarding N.J.A.C. 14:3-3.7(i), this provision has been in the rules for several years, and again, the Board has not experienced any problem receiving timely information. Therefore the suggested change has not been made.

73. COMMENT: It is unclear as to the intent of N.J.A.C. 14:3-3.7(i). We request clarification. (EDCs)

RESPONSE: This provision has been in the rules for some time. It requires a utility to alert the Board when the utility receives a directive from a State executive agency, or receives notice of facts, which may inhibit its ability to provide service.

74. COMMENT: The web page referred to in N.J.A.C. 14:3-3.7(j) contains no forms or procedures. (NJAW) (EDCs)

RESPONSE: The web page currently contains forms for requesting meter testing of various kinds. The Board has now added its interruption reporting forms.

75. COMMENT: N.J.A.C. 14:3-3.8(a) – We object to the wording "at a maximum, a four hour time block during normal business hours" and request that it be removed. Currently, we offer customers, upon request, four and eight hour windows to complete service calls. At that point, it is the customer's option to choose an appointment window. The reference to "at a maximum" and language specific to a four hour window will force the utility to limit its customers' options. Also, these Service Call Scheduling rules should be limited to in-home service calls as many service calls do not require customer interaction. (NJUA) (ACE) (EDCs)

RESPONSE: Please see the response to comment 80 below.

76. COMMENT: Proposed N.J.A.C. 14:3.8(a) requires the utility, “upon request” to provide a customer with a specified time or a four-hour time block for a service call. The words “on request,” place the burden on the customers to request a time. These words should be deleted. (RC)

RESPONSE: Please see the response to comment 80 below.

77. COMMENT: N.J.A.C. 14:3-3.8(a) appears to only require utilities to provide appointment windows if requested by the customer. This is consistent with our experience, in that many service calls do not require the utility employee to gain entry to the customer's residence, therefore no particular time period for the service call is required. An alternative reading of this section, which is plausible as worded, could require utilities to provide specific times for appointments. That would be impossible, even with dramatic increases in staffing, and the section should be modified accordingly. (NJAW)

RESPONSE: Please see the response to comment 80 below.

78. COMMENT: N.J.A.C. 14:3-3.8(a) modifies the current regulation such that, when requested by a customer, a utility is to offer a four-hour period within which a service call will occur. While we currently make every effort to accommodate customer schedules, we are concerned that the requirement of scheduling within that time period will negatively impact other customers. If the schedule has to be set up in four-hour blocks, the utility is restricted to completing the required work in that time period and won't be able to arrive at a customer's location at an earlier time. Although we have general guidelines as to the time required to complete various tasks, there is no guarantee that all jobs will fit into that schedule. Finally, even if the Board chooses to approve the regulation as proposed, it is important that the language of any regulation concerning service call scheduling be limited to those visits where the customer must be present. There are instances where utility work does not involve customer interaction or utility access to the premises and those situations should be carved out of this proposal. (NJNG)

RESPONSE: Please see the response to comment 80 below.

79. COMMENT: N.J.A.C. 14:3-3.8 should not be adopted for telecommunications companies. We are not opposed to providing prompt service. We provide quality service. Competition makes us meet customer service needs in an efficient and mutually enhancing manner. If a customer does not like how we are operating, there are a plethora of alternatives to which the customer can turn. We compete with a host of intermodal providers and to the extent that you have variable regulation which doesn't apply equally to all, you're not creating a level of regulatory playing field. You're having regulation pick winners and losers rather than the market. In addition, a company may be forced to push out the date in which it can commit to providing service in order to be sure that it can meet a regulatory requirement. Regulation never keeps pace with how the world operates. (MBQ) (VZ)

RESPONSE: Please see the response to comment 80 below.

80. COMMENT: Proposed N.J.A.C. 14:3-3.8 sets a maximum four-hour time block for service call appointments. We are committed to providing the highest level of customer service at all times. However, it will not always be physically feasible to arrive at a customer service appointment within the four-hour period. The Federal regulations at 49 C.F.R. §192.615 require gas distribution utilities to establish procedures for “prompt and effective response” and to “minimize the hazard resulting from a gas pipeline emergency.” In accordance with this directive, our procedures provide for the dispatch of the “nearest, most quickly available First Responder” to investigate reports of potential leaks. Both the applicable Federal rules and our dispatch policy encourage practices which promote public safety. The field personnel who investigate emergency leaks are the same as those who respond to scheduled service calls. The time and location associated with a leak investigation is difficult to predict. While some of these investigations are nothing more than “routine,” others can be more involved. It would be better to avoid a concrete time block in favor of a rule which encourages prompt service without compromising public safety. (ETG)

RESPONSE: The Board did not intend N.J.A.C. 14:3-3.8(a) to apply to a service call that does not require the customer’s presence. The provision has been modified upon adoption to clarify this. Further, the term “upon request” was intended to allow the customer to request either a specific time for the service call or a four-hour time block. The provision is so clarified upon adoption. As discussed in the response to comment 10 above, it has been the Board's experience that marketplace competition does not in and of itself eliminate the need for regulation of telephone utilities, especially in basic customer protection. These provisions are based on the Board's rules regarding service calls for cable television operators, which Board staff have found to effectively protect consumers. In the case of a gas utility that uses first responders to respond to service calls and reports of gas leaks, the Board believes that the four-hour time block is reasonable from both a customer service and a utility point-of-view. If field personnel who investigate emergency leaks are the same as those who perform service calls, an emergency leak could fall into the category of “good cause” under (d). In the Board’s experience, sometimes field personnel in the process of performing a service call are called off the service call to respond to an emergency gas leak, and then return to complete the service call. In all cases, the important point is that the customer is notified promptly of the situation so as to provide the highest level of customer service at all times.

81. COMMENT: Proposed N.J.A.C. 14:3-3.8(b) addresses the requirements for utility notification of a customer if it is unable to ensure that a service call will occur within the 4-hour time block previously supplied at the customer's request. We appreciate the intent of the Board in this regard, but believe that more flexibility is required in order to adequately address the unforeseen circumstances which occur in the operation of a utility. We therefore suggest that the regulations permit companies unable to meet a scheduled appointment to notify the impacted customer as soon as possible on the day of the appointment, but no later than one hour into the customer's scheduled 4-hour time period. This contact will also allow for timely rescheduling of the customer's appointment. This modification will allow the flexibility needed to compensate for unpredictable circumstances such as employee absence

due to illness which are often not known until the morning they occur. Proper follow-up and rescheduling will assure that customer service levels are not jeopardized.

(SJK-W)

RESPONSE: If a customer is waiting at home for a service call, canceling the service call one hour into the customer's scheduled 4-hour time period provides little benefit to the customer. If a customer commutes an hour or more to work, it is likely that the customer will schedule a full day off from work for the service call, especially if the assigned four-hour time block falls in the afternoon. Notice of cancellation that comes any time after mid-morning will not provide such a customer with a viable opportunity to go to work for even half of a day. If the customer has been promised a midday or early afternoon four-hour time block, cancellation one hour into this time block will not provide time for the customer to work at all that day. While the Board is aware that the scheduling of service calls is sometimes difficult in light of variables like employee sick days, part of the responsibility of management in any company is to handle such variables. Therefore, the commenter's suggested change has not been made.

82. COMMENT: Under proposed N.J.A.C. 14:3-3.8(b) a utility may not cancel a service call after the close of business on the business day prior to the appointment and must re-schedule within 24 hours "unless good cause is shown." We support these provisions. (RC)

RESPONSE: The Board appreciates this comment in support of the rules.

83. COMMENT: N.J.A.C. 14:3-3.8(b) provides that if the utility is unable to ensure that the service call will occur within the four-hour period provided under (a) above, the utility shall inform the customer at the earliest possible time, and in no case later than the close of business on the business day prior to the scheduled appointment. The words "attempt to" should be inserted between "shall" and "inform" in the first sentence of (b). The telephone service provider should not be responsible if the customer cannot be contacted because the customer is not at the can-be-reached number or if the can-be-reached number was inaccurately provided. (MBQ)

RESPONSE: The situation described by the commenter is already addressed in the cited provision. N.J.A.C. 14:3-3.8(b) includes a "good cause" exception to the requirement that utility cancellation of an appointment must occur before close of business on the day before the appointment. Good cause is defined at N.J.A.C. 14:3-3.8(d), which includes the customer's unavailability in the term.

84. COMMENT: N.J.A.C. 14:3-3.8(c) – we object to the 24 hour requirement to reschedule the service call and request that the prior language "at the earliest possible time" be retained. By way of example, the 24 hour requirement would require personnel needed to address a system emergency to be redeployed in order to reschedule appointments. In such event, the utility should not be required to reschedule service calls until after the emergency has ended. In addition, the proposed change would limit the customer's options and place an unrealistic burden on the utility's existing work schedule. (ACE)

RESPONSE: The rules do not require the utility to redeploy personnel needed to address a system emergency in order to reschedule appointments. Both the requirement at (b) to cancel the service call by a certain time, and the requirement at (c) to reschedule the service call within 24 hours, are subject to an exception for good cause. N.J.A.C. 14:3-3.8(d) then defines good cause as including system emergencies. Therefore, the rules already include the provision that the commenter seeks – that is, the utility is not required to reschedule service calls until after the emergency has ended.

85. COMMENT: The definition of “good cause” in proposed N.J.A.C. 14:3-3.8(d) lists examples but also states that “good cause ... shall not be limited to” those situations. The proposed definition should be modified to include only situations beyond the utility’s reasonable control, and to include examples of situations that will not be considered “good cause,” such as understaffing, and situations not known to the utility soon enough to cancel earlier. (RC)

RESPONSE: Please see the response to comment 86 below.

86. COMMENT: N.J.A.C. 14:3-3.8(b) contains a reference to cancellations for "good cause" as defined in subsection (d). Good cause should include occasions when there is a shortage of crews in the field due to unscheduled absences outside the control of utility management. (NJAW)

RESPONSE: The definition of good cause must remain somewhat flexible, as the situations in which utilities may find themselves vary widely. The Board believes that the definition as proposed and adopted adequately describes the concept of good cause, while still providing the necessary flexibility.

SUBCHAPTER 3A. DISCONTINUANCE AND RESTORATION OF SERVICE

87. COMMENT: Three key customer protections -- medical emergencies, deferred payment agreements, and the Winter Termination Program (together with extreme cold and extreme heat protections) -- should be set forth in greater detail. Customers need to know what these protections are and when they are available in order to use them and in order to dispute utility failures to administer them in accordance with the regulations. We would be pleased to work with the Board to develop language that would accomplish these important goals. (LSNJ)

RESPONSE: The Board believes that the rules provide a sufficient level of detail on all three of these issues, while also providing utilities with the flexibility to comply with the Board's mandates in the most manner that each utility determines is most efficient for its particular territory and situation.

88. COMMENT: It appears that the proposed regulations intend to treat discontinuance for nonpayment of deposits in the same manner as discontinuance based on nonpayment of other utility charges. Proposed N.J.A.C. 14:3-3A.1 should make it clear that the term “nonpayment” includes nonpayment of a deposit. One change needed to reflect this is at N.J.A.C. 14:3-3A.1(a)4, which lists several other “acts or omissions on the part of the customer” that provide a basis for discontinuance in

subsection. The “other” reasons for discontinuance include “[f]ailure to make or increase an advance payment or deposit as provided for in these rules or the utility’s tariff.” This item should be eliminated from the list of “other acts and omissions” in (a)(4), and incorporated in the definition of “nonpayment” in N.J.A.C. 14:3-3A.1(a)(3). (RC)

RESPONSE: In most cases the rules treat nonpayment of deposits in the same way as nonpayment of bills. However, this is not true in every case. For example, in the provisions for restoration of service at N.J.A.C. 14:3-3A.9(c), the utility may require payment of all past due charges for service as a condition of restoration. In this case, the utility will presumably have already utilized the deposit to pay down the outstanding charges. However, after service has been disconnected for nonpayment, the utility may not require payment of a new deposit as a condition of restoration, but instead must allow the customer at least fifteen days to provide the deposit. If the customer fails to pay the deposit within fifteen days, then nonpayment of the deposit may become the basis for a subsequent disconnection of service. This has been clarified at N.J.A.C. 14:3-3A.1(a)4. N.J.A.C. 14:3-7.7 has also been clarified to indicate that an unpaid deposit may be included in the charges covered by a deferred payment agreement.

89. COMMENT: N.J.A.C. 14:3-3A.1(b) and (c) are inconsistent, in that (c) prohibits discontinuances except Monday-Thursday during business hours, while (b) requires the utility to shut off service upon request within 48 hours. If (c) refers only to involuntary discontinuances, it should so state; otherwise these sections should be rewritten for consistency. (NJAW)

RESPONSE: N.J.A.C. 14:3-3A.1(b) and (c) are not inconsistent because they address different types of discontinuances. N.J.A.C. 14:3-3A.1(b) addresses voluntary discontinuance of service, whereas (c) addresses involuntary discontinuance. N.J.A.C. 14:3-3A.1(c) has been modified slightly to clarify this point.

90. COMMENT: In N.J.A.C. 14:3-3A.1(b), in the event that a markout is needed in order to shut off water service, there should be an exception to the time frames to accommodate the markout rules. (NJAW)

RESPONSE: In general, utilities are required to maintain their facilities in good condition, so a voluntary service shutoff should not require excavation or a markout under N.J.A.C. 14:2. However, if a utility finds that it must obtain a markout prior to shutting off service to a particular customer, N.J.A.C. 14:3-3A.1(b) provides the utility with the option of taking a final meter reading during the 48 hours after the shutoff request, and then returning to the location shut off service after the markout is completed. In cases of emergency, an emergency markout can be obtained under N.J.A.C. 14:2.

91. COMMENT: N.J.A.C. 14:3-3A.1(d) requires utility workers to accept payments in the field. This requirement creates a potential safety risk for employees, who could become targets of violent crime if it became known that they took cash payments from customers. There are also bonding and accounting issues with this requirement. Our current practice is to delay a shut-off if the customer makes a bona-fide attempt

to pay. The customer is advised to call the toll-free customer service center, where the customer will be given the location of the nearest alternative payment provider. Once the payment is made, the customer can take the payment confirmation number from the receipt and call in the confirmation to the customer service center, at which time the shut-off will be cancelled. (NJAW)

RESPONSE: The Board is aware that this requirement can sometimes impose a burden on a utility field worker. However, it has been the Board's experience that this requirement also has substantial benefits, both for the customer and the utility. Absent this requirement, there is the potential for shutoffs of customers who are unable to get to a service center, in addition to seniors who oftentimes forget to pay or are also unable to get out to pay or mail their payment. There are utilities who have been able to prevent shut-off action through field collection, sometimes to unsuspecting customers that are unaware of pending shut-offs. In response to the accounting and bonding issues, this collection practice has been in force for a long time and utilities have been in compliance, or have an alternate plan for field collection as set forth above by NJAW.

92. COMMENT: Proposed N.J.A.C. 14:3-3A.1(d) provides that, when a utility discontinues service for reasons other than nonpayment, the utility "shall provide reasonable notice to the customer, to the extent reasonably possible." The term "reasonable notice" requires a definition. We would recommend that the notice period be ten days, unless the utility can demonstrate that an emergency or other exigent circumstances require a shorter notice period. A ten-day period is the same as that provided for discontinuance of service for nonpayment, and it allows time for the customer to submit an informal or formal complaint to the Board in the event the reason for the discontinuance is disputed. (RC)

RESPONSE: Aside from nonpayment, there are differing reasons for which a utility may terminate a customer's service, some of which may implicate public safety. The number of days notice that may be appropriate for one situation may not be appropriate for another. In order to ensure that the rules provide the flexibility necessary for the utility to respond appropriately to these different situations, the Board has not made the suggested change.

93. COMMENT: N.J.A.C. 14:3-3A.2(a): The Board's current regulations, at N.J.A.C. 14:3-3.6(c) prohibit disconnections for nonpayment unless the customer's arrearage is more than \$50, or the account is more than three months in arrears. Proposed N.J.A.C. 14:3-3A.2 would increase the dollar threshold to \$100. An increase in the threshold is long overdue, but we believe this amount is inadequate in light of the current high rates that prevail for electric, gas and water service. We propose that, instead of including a dollar threshold, this provision be amended to prohibit disconnections for nonpayment unless the customer is more than two months in arrears. (RC)

RESPONSE: Please see the response to comment 94 below.

94. COMMENT: Under N.J.A.C. 14:3-3A.2(a), the rationale for the proposed nonpayment threshold increase to \$100 is described as increases in utility bills.

However, increasing the threshold to \$100 will only result in shifting the burden from customers that fail to meet their financial obligation to those ratepayers who continuously pay their bills in full and on time. This will also increase the amount of money owed by the customer if they are ultimately disconnected, making it more difficult for them to pay any amounts in arrears to restore service. For utilities such as water companies who bill in 3-month increments, such an increase can especially create a financial burden. (NJUA) (ACE)

RESPONSE: The Board believes that the increase to \$100 makes sense in light of inflation and rising utility prices. However, the suggestion to allow two months of arrears before disconnection could in many cases result in a customer accruing a significant debt prior to being disconnected. The greater the debt that has accrued prior to termination, the more difficult it will be for the customer to meet the requirements for reconnection. Therefore, it is important that the utility be able to move to disconnect a customer in a timely fashion, before an unmanageable debt accumulates. The Board believes that the \$100 threshold strikes an appropriate balance – it gives the customer a reasonable "grace period" prior to disconnection, but will prevent the buildup of an unmanageable debt to the utility.

95. COMMENT: N.J.A.C. 14:3-3A.2(a) makes an exception for telephone service. This is confusing since proposed N.J.A.C. 14:3-3A.2(b) already references (a). (MBQ)

RESPONSE: The Board has consolidated N.J.A.C. 14:3-3A.2(a) and (b) upon adoption to reduce confusion.

96. COMMENT: The grounds for discontinuance of service for non-payment described in N.J.A.C. 14:3-3A.2(b) should be expanded to include non-payment of costs associated with damages caused by a customer. (NJNG)

RESPONSE: It is not clear exactly what types of damages the commenter intends the rule to cover. However, the provision, as proposed and adopted, prohibits the utility from disconnecting service for nonpayment of charges for repairs to utility equipment. If a utility can prove and quantify damage to its equipment caused by a customer, the utility can pursue legal action against the customer through the courts on a case-by-case basis. The cases in which such damage might occur are varied and fact-sensitive and thus are more appropriately pursued through the courts than through a rule.

97. COMMENT: N.J.A.C. 14:3-3A.2(e)5 prohibits a utility from disconnecting a customer if there are charges in dispute. Is it Board staff's experience that utilities do not terminate service while a customer is in the process of resolving this dispute? (LSNJ)

RESPONSE: The Board has found that utilities comply with this rule. However, some customers do not understand that they cannot dispute the entire bill, because there are portions of the bill that are outside the control of the utility. As long as utility service has not been disconnected, the customer is responsible for some charges. Occasionally this confusion gives rise to a shutoff that could have been avoided.

Comments on Winter Termination Program and other weather-related shutoff restrictions:

98. **COMMENT:** N.J.A.C. 14:3-3A: We support the Board's proposal to extend the termination moratoriums for the summer and winter months. (NJCA)

RESPONSE: The Board appreciates this comment in support of the rules.

99. **COMMENT:** Board staff has not supplied quantitative or qualitative studies to explain or support a 40-degree minimum termination threshold. We have been cognizant of the impact of extreme weather conditions pursuant to the existing regulations. In fact, we have not been subject to any board investigations for alleged violations of this provision since the rule's inception. The proposed new requirement would greatly limit our ability to terminate residential customers' accounts for nonpayment of service and we believe it's overly restrictive. The proposed restriction would create a higher number of delinquent accounts and increase the delinquent balances on these accounts. This would make it more difficult for customers to recover and start paying bills on a timely basis. It would also create a substantial increase of accounts being shut off for non-payment of service once weather restrictions are lifted. As such, we oppose this proposed rule amendment. (PSEG)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

100. **COMMENT:** Under N.J.A.C. 14:3-3A.5, we are concerned with the extension of the winter termination program from March 15th to April 1st. The Board already has the authority to extend the shutoff timeframe when weather conditions so dictate, an occurrence which has been rare. (NJUA) (ACE)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

101. **COMMENT:** N.J.A.C. 14:3-3A.5 entitled Winter Termination Program for residential electric and gas, proposes to extend the winter moratorium from March 5th to April 1st. If this winter moratorium period is currently extended, our outstanding receivables and ultimately our write-off costs will increase. This will have a negative impact on all of our customers' bills. The board already has a right to extend the moratorium when it deems that conditions are appropriate. The board has only needed to exercise this right three times during the last two decades. There is no need to impose this uniform additional extension of time. Instead we suggest that the Board continue to reevaluate the need to extend the moratorium on a yearly basis based on actual issues. (PSEG)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

102. **COMMENT:** The Winter Termination Program is a key protection from dangerous cold-weather terminations, and eligibility should not have to be affirmatively raised and demonstrated by an eligible customer as would continue to be the case under proposed N.J.A.C. 14:3-3A.5. The simplest solution would be to prohibit most or all heating utility terminations during the winter months. Otherwise, a utility should be required to take all reasonable steps to determine whether a customer to be terminated during the winter moratorium period is protected under the Winter Termination Program *before* service is disconnected, including but not limited

to asking the customer. If in response to such an inquiry, or on the customer's own initiative, the customer self-identifies as eligible for Winter Termination Program protection, termination during the moratorium period should only be permitted on order of the Board after a hearing. (LSNJ)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

103. COMMENT: For purposes of consistency and clarity, the words "at any time" should be added to proposed N.J.A.C. 14:3-3A.2(e)1 as follows:

Whenever the high temperature is forecast to be 40 degrees Fahrenheit or below **at any time** during the next 24 hours, electric and gas utilities shall not, within any portion of their service territories, disconnect residential service . . . (LSNJ)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

104. COMMENT: Proposed N.J.A.C. 14:3-3A.2(e)1 states that the low temperature at which gas service discontinuance for nonpayment is prohibited during the winter heating season be increased from 32 to 40 degrees Fahrenheit. The stated reasoning is that it ". . . will provide greater protection for customers, and should not impose an undue burden on utilities because of the many additional assistance programs that have been instituted since the rules were last adopted." This is not necessarily true. It is not always the low income customer who does not pay his or her bill. The potential impact to our uncollectible position if the temperature point is increased presents a real potential burden which is not fair to us or our customers. We urge the Board to maintain the temperature point at 32 degrees Fahrenheit. Geographic differences within each utility's service territory should also be considered. The Board is currently permitted to extend the Winter Termination Program at its discretion. We will continue to comply with the Board's requests to voluntarily suspend service disconnections during extended cold periods. (ETG) (ACE)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

105. COMMENT: The proposed change to provide protection from termination of service when the forecast temperature is below 40° Fahrenheit (N.J.A.C. 14:3-3A.5(e)1) is highly beneficial to New Jersey's utility customers, and to its utilities as well. It will, quite simply, save lives. We commend the Board's proposal. (LSNJ)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

106. COMMENT: The current regulation has provided sufficient protection to customers experiencing payment difficulties. While we are certainly concerned with the health and safety of our customers, we foresee unintended consequences related to customer payment patterns, which could increase the incidence of past due bills and the necessity of instituting additional collection activities, increasing operational costs to the utility overall. (NJNG)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

107. COMMENT: Under N.J.A.C. 14:3-3A.2(e), there is concern for customer payment patterns. This change could potentially reduce the number of days eligible

for shut off by more than 20 days each year, significantly impacting outstanding and uncollectible amounts. These measures are overly protective and unnecessary. By shrinking the dates when customers in arrears can be disconnected, timely paying customers will be further burdened by the shifting of costs from non-payers to them. (NJUA) (ACE)

RESPONSE: Please see the response to comment 114. **COMMENT:** below.

108. COMMENT: N.J.A.C. 14:3-3A.2(e)3 – By lowering the high temperature requirement and adding a “heat index” factor, this proposal will greatly impact our collection activity. We will continue to comply with the Board’s requests to voluntarily suspend service disconnections during extended heat waves. Under this circumstance, the Board should also consider geographic differences in a utility’s service territory so as to avoid disconnections throughout an entire system. The temperature limit should remain at 95 degrees with no heat index factor. (ACE)

RESPONSE: Please see the response to comment 114 below.

109. COMMENT: N.J.A.C. 14:3-3A.2(e)3. When the temperature is 84 degrees and the humidity is at 60 percent that would trigger this restriction. So even on a relatively mild summer day the heat index restriction would be in effect. Based on our own analysis using five years of historical data, we have determined that this proposal will result in an increased moratorium on discontinuance of service for customers eligible for WTP of approximately three and a half months, resulting in a loss of an additional 15.1 million dollars per year. This will dramatically affect write-off and have a negative impact on our customer bills through the SBC [Editor’s note: Societal Benefits Charge], as well as on us through an increase to the SBC. BPU staff has not offered any quantitative or qualitative studies to support such an extension of the WTP moratorium. The almost doubling of the moratorium will require us to examine our use of unionized resources. We will need to consider the elimination of permanent field collection positions and the potential for outsourcing in order to meet seasonal peaking opportunities which will create significant concerns among our union members and union leaders. (PSEG)

RESPONSE: Please see the response to comment 114 below.

110. COMMENT: N.J.A.C. 14:3-3A.2(e)3: We strongly support the proposed amendments to strengthen the hot weather termination protections. Bringing the warm weather termination protection trigger down from 95 degrees to 90 degrees is an important step in preventing heat-related deaths. It’s clear that serious health-related issues start to occur at 90 degrees in conditions of high humidity. The proposal is a strong one and we support it wholeheartedly. The national weather service has looked at the scientific studies and said that human health consequences start to increase dramatically as temperatures rise above the high 80s to 90-degree level and go up into the low 90s, and that the effect of the heat does vary with humidity. (LSNJ)

RESPONSE: Please see the response to comment 114 below.

111. COMMENT: N.J.A.C. 14:3-3A.2(e)3: We strongly oppose the proposed restriction of hot weather termination protections to customers eligible for the winter termination program. First, determining eligibility for the Winter Termination Program -- particularly during the summer months -- would complicate an otherwise simple, very effective, and potentially life-saving protection, and leave many vulnerable utility customers at great risk. Utilities at best can identify only some of their winter termination eligible customers from their computerized account records. Others will be protected only if they know that they are entitled to protection and then have been able to determine which national weather stations cover their utility's service areas, then have been able to access the applicable predictions from the correct national weather stations, then that they know they are eligible for the winter termination program protections, even though it's the height of the summer, then know that they have to contact their utility to relay this information in order to be protected. The burden here would eviscerate the protection. Second, by its very nature, this is a protection that should apply to everyone. Serious illness and death are risks for every customer in the midst of a heat wave. Finally, it's easy to implement. On average, temperatures in New Jersey reach the dangerous territory over 90 degrees 24 days each year. (That's a 90-degree temperature, not heat index). And many of those 24 days are Fridays and weekends when terminations are already prohibited under other BPU rules. All the rule requires of the utilities is that they wait until the dangerously high temperatures have passed before terminating electric service for non-payment. It's simple. It's easy. It's virtually cost-free. And the alternative is serious injury and death. There's simply no justification for a restrictive rule in this context. (LSNJ)

RESPONSE: Please see the response to comment 114 below.

112. COMMENT: The proposed change to provide protection from termination of service when the forecast temperature is above 90° Fahrenheit (N.J.A.C. 14:3-3A.5(e)3) is highly beneficial to New Jersey's utility customers, and to its utilities as well. It will, quite simply, save lives. We commend the Board's proposal. Protection from termination of vital utility services for vulnerable customers should arise when the temperature is forecast to be 90° Fahrenheit or higher at any time during the following 48 hours. The trigger of 95° Fahrenheit would simply fail to protect against heat-related deaths. National Weather Service analyses show that the potential for serious, life-threatening health consequences as a result of excessive heat begins to arise at 90° Fahrenheit, and becomes pronounced under typical summer conditions in New Jersey as the temperature rises from 90° to 95° Fahrenheit. The NWS categorizes the health risk of high-temperature conditions by using the Heat Index, which is a function of temperature and relative humidity. The Heat Index begins to reach the "Extreme Danger" range, at which "heat stroke [is] highly likely with continued exposure," at 90° Fahrenheit with very high relative humidity. Between the temperatures of 90° Fahrenheit and 95° Fahrenheit, the relative humidity at which heat stroke becomes highly likely steadily decreases to approximately 75%. The average daily high relative humidity in some or all parts of New Jersey exceeds 75% throughout the summer months. In addition to reaching the "Extreme Danger" range, the Heat Index also reaches the "Danger" range, at which heat exhaustion is likely

and heat stroke becomes possible with prolonged exposure, at a relative humidity of between 65 and 70% when the temperature is 90° Fahrenheit, and at a relative humidity of 50% by the time the temperature reaches 95° Fahrenheit. The Legislature in P.L. 2002, c.62, provided that “in view of the severity of the impact of sustained heat on the physical well-being of at-risk individuals, it is the public policy of this State to ensure that these individuals, their financial circumstances notwithstanding, are not deprived of electrical power during periods when the amelioration of the effects of high heat and humidity is essential to their health and welfare.” Severe impact on the health of at-risk individuals is possible and even likely, according to the National Weather Service, at temperatures below 95° Fahrenheit, if the relative humidity is high. (LSNJ)

RESPONSE: Please see the response to comment 114 below.

113. COMMENT: N.J.A.C. 14:3-3A.2(e)3 addresses the proposed protection for winter termination program customers during summer days with a heat index of 90 degrees or greater. We agree that there have been many additional assistance programs that have been instituted since the rules were last adopted, and we have continued our commitment to work with low-income and payment-troubled customers to offer them payment options to help meet their energy needs. Because of these programs, an extension of the moratorium and the limit modifications should not be necessary. All customers with economic challenges are covered by one of these programs. We are extremely proud of the focus and effort we put forth in this area to educate and reach more customers in need. As a result, we strongly believe that our collection efforts should not be further restricted but should, in fact, be bolstered by rules that give more, not less, leverage in collecting on delinquent accounts. (PSEG)

RESPONSE: Please see the response to comment 114 below.

114. COMMENT: Although they are not common, natural gas powered air conditioners do exist, and are currently marketed by natural gas utilities. Although the Legislature limited the mandate of P.L. 2002, c.62 to electric service, there is no constraint on the Board providing more extensive consumer protections with respect to utility terminations. Accordingly, we suggest that the Board replace the phrase “electric utility” in proposed N.J.A.C. 14:3-3A.2(e)(3) with the phrase “electric utility or gas utility if the customer uses natural gas for cooling purposes.” (LSNJ)

RESPONSE: To comments 99 through 114: The commenters have raised many important issues, including several that may result in major impacts to ratepayers as a whole. The Board is very concerned to note that these comments indicate a potential impact from the proposed rule changes that is broader than anticipated. As observed by one commenter, the Legislature has mandated that the Board minimize nonpayment shutoffs to low-income customers that are genuinely at risk of health or safety consequences. However, the Legislature has also tasked the Board with protecting all ratepayers from unreasonably high costs. Both of these mandates are becoming more important, and more difficult to achieve, in the current climate of high fuel costs and general economic slowdown. Based on the plethora of concerns identified by the commenters, the Board has determined that the changes proposed may have been excessive. While it is important to protect customers at risk of

significant threats to health or safety, it is also important to minimize the chance that paying customers will be forced to subsidize those who do not truly need protection. Furthermore, staff have researched other state programs and found that New Jersey is significantly more protective than other nearby states in this regard. Finally, commenters have raised other possible ways of achieving the goals the proposed amendments were meant to achieve. For example, programs to educate at-risk customers about the availability of assistance, and to ensure that enrollment is simple and easy, may significantly increase participation in these programs and thereby protect more customers from potentially dangerous shutoffs. However, this would require substantive changes to the rules and, as discussed in earlier responses, substantive changes may not be made upon adoption. Therefore, the Board has adopted the changes as proposed, and has, in a companion proposal found in this issue of the New Jersey Register, proposed amendments to chapter 3, which would restore the previous provisions governing weather-related termination prohibitions. Regarding the suggestion that gas air conditioning should be included in the weather-related shutoff restrictions, the Board does not have accurate data regarding the number of air conditioners that run on gas, and anecdotal evidence suggests that this number is very small. Therefore, the Board invites the public to submit information on this issue, and if Board staff obtains data indicating that a significant number of air conditioners use gas, the Board will consider this option for a possible future rulemaking. In the meantime, the Board will strive to ensure that low-income customers that are genuinely at risk will be protected from serious health or safety consequences of nonpayment shutoffs.

115. COMMENT: Proposed N.J.A.C 14:3-3A.2(e)5 and 14:3-7.6 prohibit the utility from discontinuing service for nonpayment of disputed charges, provided the customer pays the undisputed charges and requests that the Board investigate the disputed charge. Both provisions allow customers only five days to request an investigation by the Board – an extremely short time in which to make a complaint with the Board, especially if that period includes weekends or State holidays. More appropriate would be the 10-day period provided elsewhere for notices of disconnection. (RC)

RESPONSE: The Board has clarified the rule upon adoption to indicate that the customer must request the investigation within five business days. In addition, the reference to this deadline has been deleted from N.J.A.C. 14:3-3A.2(e)5, since it is redundant with N.J.A.C. 14:3-7.6(b), which is already cross referenced in this provision. Regarding the suggestion for a ten day deadline, the rules provide for a process by which a customer can call the utility to complain. Then, if the customer is not satisfied by the utility's response to the initial call, the customer can immediately request a Board investigation by telephone or e-mail. Five days is ample time for a customer to do this. Once the customer has requested the Board investigation, the customer is then protected from shutoff, provided the customer pays the undisputed portion of the bill. The Board believes this provides a simple, quick method of ensuring customer shutoff protection pending resolution of a dispute.

116. COMMENT: Proposed N.J.A.C. 14:3-3A.2(e)5 refers to N.J.A.C. 14:3-7.6(a) as governing investigations by the Board. The cross-reference should be to the entire section (N.J.A.C. 14:3-7.6) rather than only subsection (a). (RC)

RESPONSE: The cross reference should have been to N.J.A.C. 14:3-7.6(b), which specifically provides for a customer to request a Board investigation, and not to 7.6(a). This correction has been made upon adoption.

117. COMMENT: Proposed N.J.A.C. 14:3-3A.2(e)5 is confusing, and appears to suggest that the utility may discontinue service unless the Board takes action within five days after the customer makes the complaint. The Board should instead adopt the language in the current N.J.A.C. 14:3-7.13, modified to reflect a 10-day period. (RC)

RESPONSE: The Board agrees that the final sentence of proposed N.J.A.C. 14:3-3A.2(e)5 is confusing, and addresses subject matter more fully explained at N.J.A.C. 14:3-7.6. Therefore, the sentence has been deleted upon adoption.

118. COMMENT: Proposed N.J.A.C. 14:3-3A.2(i) is imprecise and unnecessarily confusing, leading to dangerous results. We suggest the following language:

Discontinuance of residential service for nonpayment is prohibited if a medical condition exists within the premises which requires utility service or which would be aggravated by a discontinuance of service and the customer gives reasonable evidence of inability to pay. Submission of a physician's statement shall constitute presumptive proof that such a condition exists. Discontinuance shall be prohibited for a period of 60 days, except by order of the Board, whenever (i) a customer submits a physician's statement, or submits other reasonable evidence, to the utility as to the existence of the medical condition, or (ii) the utility knows or has reason to know of the existence of the medical condition. (LSNJ)

RESPONSE: The main differences between the commenter's suggested language and that of the rule as proposed are: the addition of the phrase "which requires utility service," the presumption that a physician's statement proves the medical condition, and the deletion of the authorization for the utility to require recertification after 30 days. The Board does not believe that the first phrase is necessary, as any medical condition that would be aggravated by the shutoff of utility service presumably "requires utility service." The presumption that a physician's statement proves the medical condition is vague and could lack detail regarding the necessary content of a physician's statement. Furthermore, it fails to provide the utility with any discretion to investigate further in cases where there are obvious problems with the physician's statement. The Board does not believe it is unreasonable to require a customer to obtain recertification of the medical condition after 30 days. Finally, holding the utility responsible for refraining from shutting off a customer if the utility "has reason to know" of a medical condition is a vague standard that could likely give rise to confusion and misunderstanding, without providing a significant benefit to customers with such conditions. This provision is also unnecessary, as these customers can simply establish their medical condition by following the procedure in the rules.

119. COMMENT: N.J.A.C. 14:3-3A.3: We are concerned with improving notices of termination and significantly enhancing termination prevention strategies. Terminations of vital utility services cause tremendous personal hardship, exacerbate serious medical conditions, and cause death. This is not something where we are balancing a few pennies on each side of the ledger. This is where people's lives are intimately affected and ultimately lost if we make the wrong calls. With energy costs increasing and the potential for the affordability gap for crucial utility services likely to widen, measures to eliminate all unnecessary terminations of service are of the utmost importance. Shutting off service doesn't do anyone any good -- not the utility, not the board, not the customer. Preventing termination of services and increasing payments of affordable energy charges are win-win propositions. (LSNJ)

RESPONSE: The Board agrees that minimizing shutoffs for nonpayment is the optimal solution to many problems. However, the Board also has a responsibility to minimize costs for all customers, not just for low income or at risk customers. The Board believes that the combination of protections provided by these rules strikes an appropriate balance between these two objectives.

120. COMMENT: Residential notices of discontinuance should *a/ways* be a separate document from the monthly bill. We commend the Board for having made this the default in proposed N.J.A.C. 14:3-3A.3(c). However, there should be no exemptions for individual utilities. Additionally, any reasonable increased costs to utilities, to the extent they are not offset by improved collections, should be recoverable through the ratemaking process. This is a very important -- but also simple and inexpensive -- protection. (LSNJ)

RESPONSE: The Board appreciates this comment in support of the rules. The exceptions provided in this provision are sometimes necessary for the few very small utility companies in New Jersey. For such companies, the Board must address this issue on a case-by-case basis in order to approach the unusual situation of the utility in a workable way.

121. COMMENT: N.J.A.C. 14:3-3A.3(c): The notice of discontinuance should be served in person or by regular and certified mail. (LSNJ)

RESPONSE: In determining the appropriate way to deliver notices of discontinuance, the Board must maximize the probability that the customer will receive the notice, while minimizing the cost and burden upon the utilities. The commenter's recommended practices would significantly increase the cost and burden on utilities. However, it is not clear that the practices would significantly increase the number of customers that receive notices of disconnection. In many cases, customers are subject to disconnection because they have moved away without paying their utility bill. In these cases and many others, personal service is likely impossible, and certified mail is not likely to reach a customer any more effectively than regular mail. Therefore, the suggested change would force bill-paying customers to subsidize extraordinary efforts to reach customers who have not paid their bills, without a clear indication that these efforts will bear fruit. Although the

commenter's suggested change has not been made, the section has been clarified to indicate that the ten days will be counted from the postmark date.

122. COMMENT: N.J.A.C. 14:3-3A.3(b) and (c): The time periods for payment should be expanded to 30 days for payment and 15 days for the notice of discontinuance. This would allow adequate time for persons who may need to obtain assistance, file a dispute, or whose sole source of income is received monthly. (LSNJ)

RESPONSE: The deadlines suggested by the commenter would be inconsistent with the billing cycles used by the vast majority of New Jersey utilities. Furthermore, it has been Board staff's experience that allowing too much time for a customer to pay can allow the customer to sink even further into debt, to the ultimate detriment of the customer. Finally, it should be noted that a customer should already be aware of the fact that they are in arrears prior to receiving the notice, as the utility will have been sending bills in an effort to collect its charges.

123. COMMENT: Regulated utilities in New Jersey market their for-profit services and urge customers to contact their collection departments to make payment arrangements in both English and Spanish. And many utility and BPU publications are routinely provided to customers in both English and Spanish -- a practice that is to be commended. Yet the most important notice sent to customers, the notice of discontinuance for alleged nonpayment, could still be provided on an English-only basis under proposed N.J.A.C. 14:3-3A.3(e). More than 1.1 million New Jersey residents are Hispanic or Latino, and Spanish is the language spoken in more than 115,000 low-income utility customer households in New Jersey (nearly one in four of such households). All required notices should be provided in both English and Spanish, as is required in many other states with sizable immigrant populations. (LSNJ)

RESPONSE: The Board is aware that there are many Spanish speaking utility customers in New Jersey. Therefore, N.J.A.C. 14:3-7.1(b) requires any utility that does not provide all notices of discontinuance in both Spanish and English must include on every utility bill include a statement in Spanish informing customers that they may request that all notice of discontinuances be provided to them in Spanish. The bill must include a toll free telephone number for this request, and once the customer has made this call, all termination notices for this customer must be in Spanish. The Board believes that this adequately protects Spanish speaking customers.

124. COMMENT: Notices should be required, as they are in California, to be provided in the language in which the utility offered the service. In order to implement these changes, proposed N.J.A.C. 14:3-3A.3(e) should state that "If any utility service has been offered to the customer in a language other than English or Spanish, or if the customer requests notice in another language in which the utility does business, the utility shall send a version of the notice of discontinuance in that language." (LSNJ)

RESPONSE: The commenter's suggestion would impose a significant regulatory burden, and corresponding cost, upon utilities, which would ultimately be borne by ratepayers. The Board must balance the goal of access for speakers of other

languages against the need to minimize cost for all ratepayers. In order for a person who speaks neither English nor Spanish to become a utility customer, they must complete the contracting and enrollment process, which generally occurs in English. Therefore, the person presumably has access to some assistance from a family member or assistance agency. In addition, N.J.A.C. 14:3-3A.4(b) provides for utilities to annually notify customers that they may designate a third party to receive copies of their discontinuance notices. Based on these factors, the Board believes that the rules make adequate provision for a customer who speaks neither English nor Spanish.

125. COMMENT: N.J.A.C. 14:3-3A: We support the Board's attempt to provide additional outreach to vulnerable populations like the ones that are 65 years old. We hope that the utilities continue to provide services like that in a good-faith manner. (NJCA)

RESPONSE: The Board appreciates this comment in support of the rules.

126. COMMENT: We support the requirement of good faith efforts at telephone contact prior to termination in proposed N.J.A.C. 14:3-3A.4(c). We urge the Board to extend this requirement to all customers, not only those over 65 year of age. (LSNJ)

RESPONSE: The Board appreciates this comment in support of the rules. The Board has not extended this provision to apply to all customers. The Board does not believe that the cost of this change would be justified by its likely benefit.

127. COMMENT: N.J.A.C. 14:3-3A.4(c) requires utilities to use their best efforts to call customers over 65 years old to notify them of a service discontinuance. Setting aside the thorny issue of whether customers even want utilities probing into their age, this rule is providing customers with very little additional benefit, if any, since the customer already receives notification by mail. And this is very difficult to implement because utilities don't necessarily track this information or have a readily available means of acquiring it. Requiring public utilities to collect certain kinds of information, such as the age of customers, could be considered objectionable by some customers. (NJAW) (VZ)

RESPONSE: Please see the response to comment 128. **COMMENT:** below.

128. COMMENT: N.J.A.C. 14:3-3A.4(c) would require utilities to "make good faith efforts" to determine the age of a customer and to notify a customer of discontinuance of service for nonpayment if that customer is over 65 years of age. We typically do not require this type of customer-specific information and do not maintain a database to support this type of reporting requirement. To do so would be administratively onerous given that the qualifying customers would constantly come within purview of the requirement. We see numerous implementation and privacy issues implicated with this proposed rule. (MBQ)

RESPONSE: The commenter states that utilities do not typically require this information or maintain a database of such information. However, this requirement has been in effect for the past five years (see the previously effective rules at N.J.A.C. 14:3-7.12(a)2). Therefore, any utility that has not been doing this is in

violation of the rules. The Board does not believe that the good faith effort required will be onerous, given that this information can be requested at the time the customer applies for service. Regarding privacy, the utility is merely required to make a good faith effort to collect the information. It is not the fault of the utility if a customer prefers not to provide the information.

129. COMMENT: N.J.A.C. 14:3-3A.4(g)2 and 3 should be amended to require that the "statement of customer rights" include the option of calling a Legal Services program for assistance with paying or contesting a bill. Also, the rule should require that the "statement of customer rights" describe the available deferred payment agreement using not only the term "reasonable" but also the term "affordable."
(LSNJ)

RESPONSE: There are many nonprofit organizations in New Jersey that assist utility consumers. The Board does not believe it is appropriate to single out one of these organizations for special mention in the statement of customer rights. In addition, the Board does not believe that it is necessary to add the term "affordable" to the description of the deferred payment agreement that utilities must make available to customers. This portion of the statement of customer rights is intended merely to alert customers to the existence of deferred payment agreements, not to fully describe them.

130. COMMENT: N.J.A.C. 14:3-3A.4: In addition to the commendable specific requirements regarding type size, all information on the notice of termination should be required to be clear and conspicuous. (LSNJ)

RESPONSE: The Board believes that the rules adequately ensure that these notices will be clear and understandable to customers, and that therefore the suggested change is not necessary.

131. COMMENT: All information should be required to be printed on the front of the page. The requirement in proposed N.J.A.C. 14:3-3A.4(i) that the "STATEMENT OF CUSTOMER'S RIGHTS" appear on the back of the notice should be eliminated.
(LSNJ)

RESPONSE: The Board believes that the rules' requirements are sufficient to ensure that customers will see the statement of customer's rights, despite its location on the back of the notice. In addition, the utility should be encouraged to use both sides of paper when sending mailings and notices, so as to reduce costs and conserve paper. However, the Board has included, in a companion proposal published in this issue of the New Jersey Register, a requirement that the bill include a boldface note on its front, indicating that the statement of customer's rights is on the back of the bill.

132. COMMENT: N.J.A.C. 14:3-3A.4(j): Since water utilities no longer charge residential fire protection customers for service, the requirement to collect certain information from those customers and to make notifications to insurance companies, fire officials, etc., if there are to be discontinuances of service seem to be moot. However, with reference to the requirements that water utilities make certain

notifications with regard to multi-use services, this issue was raised by many parties, and rejected by the Board, during the comment period for the recent changes to N.J.A.C 14:9-8. Multi-use services are not fire services. They are residential services that have been "upsized" for the convenience of customers to provide flow for a local area fire suppression system. They are not independent, dedicated fire protection lines. Multi-use services, according to the requirements for such services set forth in N.J.A.C 14:9-8, can be disconnected for non-payment without any more notice than any other residential connection, and there is a direct reference to the current N.J.A.C. 14:3-3.6. Customers who desire the protection from shut-offs for non-payment should request private fire protection service, which they can then maintain at their residence for no monthly cost. The proposed changes in N.J.A.C. 14:3-3A.4(j) would undo a recent, and heavily scrutinized, rule change. (NJAW)

RESPONSE: The commenter is correct that, in accordance with N.J.A.C. 14:9, a utility may shut off multi-use service for nonpayment. However, contrary to the commenter's assertion, multi-use service may not be disconnected for nonpayment with no more notice than other disconnections for nonpayment. In the recent readoption of the Board's water rules (N.J.A.C. 14:9), to which the commenter refers, the Board did not in fact reject the notification requirements for multi-use services. At the time of that adoption, these notice requirements were codified at N.J.A.C. 14:3-7.12(f), and required notice both for fire protection water service and multi-use water service. (see 38 N.J.R. 4490(b)) In this rulemaking, the notice provisions previously found at N.J.A.C. 14:3-7.12(f) were proposed for recodification without substantive changes at N.J.A.C. 14:3-3A.4(j). (see 39 N.J.R. 4079)

133. COMMENT: The proposed changes to N.J.A.C. 14:3-3A.4(j) should be completely rejected. Multi-use services already impose much higher monthly costs on residential customers than those customers would otherwise bear if they elected to have regular domestic service through one line and took private fire protection service through another line, for which the customer pays no monthly fee. Confusing the existing regulations with a conflicting set of notification requirements would only hurt customers. (NJAW)

RESPONSE: The Board believes that these notice requirements are important to minimize disconnections of water service that is used in fire protection systems. The consequences of a shutoff of such service could potentially be much more severe than the consequences of shutting off water used solely for domestic purposes.

134. COMMENT: N.J.A.C. 14:3-3A.8(d) is confusing because 14:3-3A.2(b) references 14:3-3A.1(a) and (b) which appear not to apply to telephone service providers. Also, the statement 'basic local telephone service' in proposed N.J.A.C. 14:3-3A.8(d) should be 'basic residential local telephone service' to be consistent with BRLTS. (MBQ)

RESPONSE: N.J.A.C. 14:3-3A.2(b), as proposed, did not refer to N.J.A.C. 14:3-3A.1(a) and (b), but referred to N.J.A.C. 14:3-3A.2(a)1 and 2. However, N.J.A.C. 14:3-3A.2(a) and (b) have been consolidated upon adoption, in order to reduce confusion. In addition, the word "residential" has been added to N.J.A.C. 14:3-3A.8(d) upon adoption, as suggested by the commenter.

135. COMMENT: Specific information about the Universal Service Fund and other utility assistance programs should be included in detail on termination notices, not just a contact number at the utility or at the board. In that regard, it's worth noting that the Universal Service Fund provides a method by which virtually all terminations for the lowest income customers can be avoided between the availability of Universal Service Fund assistance and the Fresh Start arrearage program. And important information should be on the front of the notice, not required to be on the back of the notice which is what the regulations mandate. (LSNJ)

RESPONSE: In determining the appropriate information for inclusion on a termination notice, the Board must balance the value of providing detail against the fact that too much information will overwhelm the reader and hamper the customer's ability to comprehend the most important information on the notice. The Board believes that the requirements in the rules strike an effective balance in this regard, and that requiring additional detail on the notice will reduce the customer's ability to grasp the key information on the notice.

136. COMMENT: Prompt restoration should be required within no more than four hours, and the language regarding payment should be clarified. Accordingly, proposed N.J.A.C. 14:3-3A.9 should be revised to read as follows:

14:3-3A.9 Basis for restoration

Service shall be restored within four hours upon proper application when the conditions under which such service was discontinued are corrected, and:

1. upon the payment of all proper charges due from the customer provided in the tariff of the utility,
2. upon receipt of the initial payment under a deferred payment agreement, or
3. if the Board or staff of the Division of Customer Relations so directs, such as when a complaint involving such matters is pending before it or it appears that service has been disconnected in violation of the Board's rules or regulations. (LSNJ)

RESPONSE: The Board believes that service restoration within a 12-hour time period is reasonable, taking into account a utility's other required operational functions and resources, and considering that residential service cannot be shut off on Fridays, weekends, holidays or the day preceding a holiday. The 12-hour time frame is the maximum amount of time a utility has to restore service. The Board has found that in most cases service is restored in considerably less than twelve hours. In addition, many payment arrangements are made between 5 p.m. and 8 p.m. Under the commenter's suggested 8-hour rule, utilities would be required to complete all such reconnections during the night, finishing by 4 a.m. This would be an unreasonable burden on the utilities and could cause potential hazards to field personnel.

137. COMMENT: We urge the board to examine clearer and stronger termination protections in cases involving serious medical conditions. We have some optimism that there's attention being paid to that area. Giving a presumption of credence to a physician's report is an important step. And we urge also consideration of expanding

the initial termination protection period beyond thirty days after an initial determination that there's a serious medical condition that might be exacerbated by a utility termination. (LSNJ)

RESPONSE: The Board appreciates this comment in support of the rules. Regarding expanding the initial protection period, the Board believes that the thirty day period strikes an appropriate balance between protection of individuals with medical conditions and the administrative burden and cost to the utility.

138. COMMENT: N.J.A.C. 14:3-3A.8 apparently only relates to telephone utilities, and should be moved to N.J.A.C. 14:10. (MBQ)

RESPONSE: The commenter is correct that this section applies only to telephone utilities. However, telephone utilities, like other utilities, are subject to all of the requirements in the chapter regarding discontinuance of service, and in addition to the requirements of this section. Therefore, it would be very confusing for a telecommunications utility to locate some of the discontinuance provisions with which it must comply in a different chapter from the rest, and the suggested change has not been made.

139. COMMENT: The service discontinuance and reconnection rules are overly restrictive. N.J.A.C. 14:3-3A.8 and 9 appear to be out of the touch with current market conditions. The rules limit discontinuance for nonpayment of certain services at a time when more and more customers have bundled services. It's becoming increasingly difficult to track basic and non-basic service in a single-bill atmosphere. (ATT)

RESPONSE: The rules are designed to protect customers from having their basic phone service cut off. While the Board supports utilities in offering packages of services that meet customers' needs, the Board's mandate is to ensure that customers receive adequate service, which in this context means basic service that will not be cut off because of nonpayment of an optional service. The rule is designed to fulfill this mandate, and a utility should design its service offerings in such a way as to ensure that they can comply with this requirement.

140. COMMENT: In many instances when a customer fails to make a payment, the carrier must incur collection costs or write-off a debt. This adds to the overall cost that the carrier incurs. If certain customers fail to pay their bills, it is only fair that we have a mechanism to recoup that cost from those persons rather to impose their bad debt costs onto customers who make timely payments. (ATT)

RESPONSE: The Board must balance the burden on utilities, which, as the commenter observes, is ultimately passed on to other customers, against fairness and safety for customers who have failed to pay bills. The Board believes that the rules as adopted strike this balance appropriately.

141. COMMENT: N.J.A.C. 14:3-3A.9: It is unclear what the intent is for not allowing the payment of a deposit prior to restoration. If a customer does not subsequently pay the billed deposit, will the utility be able to immediately disconnect? The purpose of a deposit is to ensure that a customer can meet his or her financial obligation. This

not only limits the utility's losses but reduces the burden on other ratepayers. Billing the deposit after restoration could cause confusion for the customer and potentially requires a second or third field visit if the deposit is not paid. We request, at a minimum, that customers who have filed bankruptcy be required to pay a deposit prior to restoration. (NJUA) (ACE) (NJNG) (SJG-W) (PSEG)

RESPONSE: Please see the response to comment 142. **COMMENT:** below.

142. COMMENT: The Board should delete all of N.J.A.C. 14:3-3A.9(c) after "the utility may require a deposit." By requiring restoration of telephone service before a deposit is paid, the Board is adding another lengthy procedure. Moreover, the requirement would increase the indebtedness of the customer to the utility before a deposit is received. This is confusing to the customer and injects increase risk of company uncollectible amounts. (MBQ)

RESPONSE: The rule does require the customer to pay all other charges prior to restoration of service, thereby reducing the customer's total debt. The Board believes that the importance of ensuring that customers have vital utility services outweighs the concern regarding the possible increase in the customer's indebtedness.

SUBCHAPTER 4. METERS

143. COMMENT: N.J.A.C. 14:3-4.1(a): We have historically provided meter enclosures and metering transformers, if required, to customers. The inclusion of the words "other equipment and" and the exclusion of the words "customarily furnished by the utility to connect the customer's equipment with the utility's facilities" could be interpreted to mean the electric utility must provide the customer's service entrance equipment. (EDCs)

RESPONSE: As noted by the commenter, the previous rules described the equipment required as that "customarily" furnished by the utility. In an attempt to more accurately describe the class of equipment required, the proposal changed the language to "necessary" equipment. However, in all cases, the practical reality is that each utility's tariff spells out the equipment the utility must furnish, and the utility is bound by the tariff. Therefore, the rule has been clarified upon adoption by replacing the phrase "necessary to provide service to the customer" with a reference to the utility's tariff.

144. COMMENT: N.J.A.C. 14:3-4.1(b) and (c) indicate that either "the customer or the utility bears the cost of meters..." Meters are purchased and installed by the electric utility. We recommend that the reference to meters be deleted. (EDCs)

RESPONSE: The Board has clarified this provision upon adoption to indicate that the utility's tariff may also determine whether the customer or the utility is responsible for the cost of purchase and installation of meters and other equipment.

145. COMMENT: N.J.A.C. 14:3-4.1(c) would be substantially improved with a specific reference to sections of the "main extension rules" rather than the general reference to N.J.A.C. 14:3-8. (NJAW)

RESPONSE: N.J.A.C. 14:3-8 contains provisions regarding ownership of extensions in more than one section. Therefore, the citation is to the entire subchapter.

146. COMMENT: We recommend that the words “and applicable national electrical codes” be added at the end of N.J.A.C. 14:3-4.2(a). (PSEG)

RESPONSE: This is not necessary, as the Board's electric service rules, which are referenced in N.J.A.C. 14:3-4.2(a), incorporate by reference all necessary national standards.

147. COMMENT: Meters and meter sockets are designed and rated for outdoor use. The change in N.J.A.C. 14:3-4.2(b) to require that meters installed outdoors shall, instead of should, be protected from weather implies that enclosures must be built around the meter and meter socket. We recommend that this change in wording not be made. Also, the added statement “and from vehicular traffic” is overly broad and should be clarified. (PSEG)

RESPONSE: The Board believes that both of the requirements to which the commenter objects provide sufficient specificity as to be practicable, while also providing necessary flexibility to the utility. Placement and configuration of meters varies tremendously from site to site, and the rules must not unduly restrict the utilities' ability to adjust meter installations to meet local conditions.

148. COMMENT: N.J.A.C. 14:3-4.2(c) should be modified by the addition of the following language at the end of the sentence “at the discretion of the utility.” “NEC rules for obstruction around electrical devices must apply.” (NJAW)

RESPONSE: The subsection, as proposed and adopted, provides for a location that will cause minimum inconvenience to either the customer or to the utility. The commenter's suggested change would deprive the customer of any say in the matter. The Board believes that it is possible and practical to afford property owners some say in the location of a meter, without placing a significant burden on the utility. Therefore, the commenter's suggested change has not been made.

149. COMMENT: N.J.A.C. 14:3-4.4(a)1 should be clarified so that it does not apply to portable equipment which, by definition, is intended to be moved regularly and is designed to withstand normal movements. (NJAW)

RESPONSE: Obviously, it would be impracticable and exorbitantly expensive for a utility to have its portable meter testing equipment calibrated and sealed every time it is moved. N.J.A.C. 14:3-4.4(a)1 was intended to apply to traditional, stationary testing equipment, and has been clarified at N.J.A.C. 14:3-4.4(a) to so indicate this. In order to ensure that the rule is not abused, a definition of “portable meter testing equipment” has also been added at N.J.A.C. 14:3-4.3. In addition, the section is rephrased somewhat to clarify that “sealed” and “certified” are equivalent, although one is an indication of approval by Weights and Measures, while the other is an indication of approval by a NIST laboratory.

150. COMMENT: N.J.A.C. 14:3-4.4(a)4i: The change from every five years to every year is unnecessary, uneconomical and not supported by any data or analysis. There is no appreciable difference between a bell prover (for gas) and a calibrated tank (for water). (NJAW)

RESPONSE: The water tanks used for testing meters are, unlike the chambers used in bell provers, open to the atmosphere and thus are subject to rust, dirt, and other disturbances that can affect their accuracy. Therefore, the commenter's suggested change has not been made.

151. COMMENT: N.J.A.C. 14:3-4.4(b): Securing the written approval of the Superintendent of Weights and Measures, accepting our laboratory, and showing that the equipment is traceable to the National Institute of Standards and Technology (NIST) should be sufficient to obtain BPU approval of our meter testing operation. It is not clear how many, if any, outside testing laboratories that meet the proposed requirements exist in New Jersey. Further, imposing requirements far in excess of those used by the Department of Weights and Measures creates an undue regulatory burden and may impose costs that have not been anticipated. (NJAW)

RESPONSE: The commenter appears to have misunderstood the provision. N.J.A.C. 14:3-4.4 requires that the equipment either be tested and sealed by weights and measures, or be tested and certified in accordance with (b)1 and 2. This has been clarified upon adoption. (Note: proposed N.J.A.C. 14:3-4.4(b)1 and 2 have been recodified upon adoption as N.J.A.C. 14:3-4.4(b)2i and ii).

152. COMMENT: As written, N.J.A.C. 14:3-4.5(e) implies that the Board inspector will test the meter. We recommend that this paragraph be re-written to clarify that a Board inspector will witness a test of the customer's meter at the utility's meter testing facility.

RESPONSE: The suggested revision is inaccurate, as Board staff sometimes tests the meter and sometimes witnesses the meter test. These details can be arranged between the utility staff and Board staff at the time the meeting is scheduled.

153. COMMENT: Proposed N.J.A.C. 14:3-4.6(c)1 no longer includes the six-year limitation on the time period for which a utility may adjust charges for meter error. This proposal is impractical and the new language is vague. A specific time period is necessary to ensure certainty with respect to the utilities' record keeping obligations. In addition, a six-year limitation is consistent with the statute of limitations applicable to breach of contract actions. Accordingly, we request that the six-year limitation remain in place. (ETG) (NJUA) (ACE)

RESPONSE: Please see the response to comment 154. COMMENT: below.

154. COMMENT: Proposed N.J.A.C. 14:3-4.6(c), which pertains to the adjustment of charges for meters which register fast, is proposed for readoption with modifications which eliminate the six-year time limit for which a utility is required to adjust charges. The six-year limit has been a long standing New Jersey regulatory practice which was implemented after much deliberation, as a fair and balanced methodology for

customers and companies in instances where the exact date a meter becomes inaccurate is unknown. We are unaware of any circumstances which would require the modification of such a successful and reasonable approach. We therefore urge the Board to continue the current six-year time limit. (SJK-W)

RESPONSE: First, it should be noted that the removal of the six-year limit, as proposed and adopted, affects only meters that are in service longer than twelve years. This is because N.J.A.C. 14:3-4.6(c)2ii provides that the time period to which the adjustment applies can be no more than half of the time between the test that found the meter inaccuracy and the most recent previous test of the meter. Therefore, for any meter in service for 12 years or less, this time period will be no more than six years. Furthermore, it is essential that utilities ensure that their meters are accurate. The customer has no practical way of checking the accuracy of their meter, and must depend entirely on the utility. Therefore, the Board must ensure that utilities monitor meter accuracy carefully, in order to carry out the Board's mandate to ensure safe, adequate and proper utility service at a reasonable rate. Finally, it has been the Board's experience that some utilities tend to have problems keeping current with required testing and maintenance of meters. The removal of the six-year limit is intended to encourage utilities to diligently strive for meter accuracy.

Regarding record keeping, meters typically contain a meter index that retains total usage measurements, so record keeping should not be a significant burden for utilities.

155. COMMENT: N.J.A.C. 14:3-4.6(d)1 should be clarified to allow adjustment in circumstances not only of theft perpetrated through meter tampering, but by all methods of theft. (NJNG)

RESPONSE: The suggested change cannot be made upon adoption, but is included in a companion proposal of amendments to this chapter, found in this issue of the New Jersey Register.

156. COMMENT: N.J.A.C. 14:3-4.6(f) no longer includes the six-year time period over which a utility can include debit adjustments on a customer's bill related to meter error. The time period should be replaced since it provides a framework within which both customers and utilities can make payment arrangements. The proposed language is not clear which could lead to confusion and possible disagreements in interpretation. (NJNG) (ACE)

RESPONSE: The provision, as proposed and adopted, provides a clear framework within which customers and utilities can make repayment arrangements after an undercharge is discovered. The previous six-year time limit for a customer to repay an undercharge has been replaced in the readopted rules with the requirement that the utility allow the customer the same amount of time for repayment as the amount of time that the undercharge continued. This repayment timeframe is intended to more closely match the time period for repayment of undercharges with the amount of the charge. If an undercharge continued for a long time, the amount of the repayment due is likely to be larger and the customer should be allowed a longer time to repay. Further, the provision is intended to provide a

further incentive to utilities to ensure that their meters are accurate. Therefore, the suggested change has not been made.

157. COMMENT: N.J.A.C. 14:3-4.6(f): it appears that there is a typographical error at the end of the last sentence where the word "overcharged" should be changed to "undercharged." (NJNG)

RESPONSE: This correction has been made upon adoption.

158. COMMENT: There is no need to test all meters prior to retirement. We recommend that N.J.A.C. 14:3-4.7(c)6 be re-written to state: "When a meter is removed from service, it shall be adjusted if necessary in order to conform to the required accuracy tolerances before being placed back in service again. However, it may be retired without test or returned to service without being tested if it is covered by an in-service sample or periodic test plan." This is the practice presently followed by the utilities. (PSEG)

RESPONSE: It has been the Board staff's experience that all utilities test meters prior to retirement. In addition, the Board has historically interpreted the rules to require this, and this re-adoption has merely clarified this point. The Board believes that the commenter's suggested scheme would fail to adequately protect customers and the utility from problems caused by inaccurate meters.

159. COMMENT: Under N.J.A.C. 14:3-4.8(a), the cost of replacing a meter that has been in service for less than two years should include all material, field resource time and back office support. (PSEG)

RESPONSE: What should be included in the cost of replacing a meter varies a great deal, depending on the utility service supplied and other factors. Therefore, in order to appropriately address the various utilities' situations, the Board does not address this question through rules, but through each utility's tariff.

160. COMMENT: N.J.A.C. 14:3-4.8(b) should be re-written to state: "Replacement that is necessitated by a change in service characteristics except when due to customer changes (i.e. self contained meter to transformer rated meter)." Utilities should be allowed to charge for these types of meter changes. (PSEG)

RESPONSE: Whether the customer or the utility should bear the cost of a meter replacement in these situations may in some cases depend on situation-specific factors, including the type of service change, the reason for the service change, whether the service change will increase or decrease usage, etc. Therefore, the specifics of how this provision will be implemented by each utility and in each case is more appropriately addressed through tariffs rather than through rules.

SUBCHAPTER 5. CONTACTING THE UTILITY

161. COMMENT: N.J.A.C. 14:3-5.1(g)2 appears to impose requirements on utility call centers to obtain and use information, such as ethnicity, that some customers may find objectionable. (NJAW)

RESPONSE: The cited provision does not require utilities to gather information on ethnicity. It requires utilities to ensure that each customer service representative that it employs to serve New Jersey customers understand the demographics of the area they serve. Basic demographic information is available to the public from many sources, including government statistics, market research firms, and websites.

162. COMMENT: Proposed N.J.A.C. 14:3-5.1(g) includes a new provision requiring any utility wishing to relocate a customer call center outside of New Jersey to first demonstrate to Board Staff that the call center representatives in the new location will be knowledgeable about the rules and regulations that protect New Jersey ratepayers, and about weather and other conditions that affect utility service in New Jersey. We support this proposal. (RC)

RESPONSE: The Board appreciates this comment in support of the rules.

163. COMMENT: Proposed N.J.A.C. 14:3-5.1(g) should require that, simultaneously with notice to Staff, the utility must notify Rate Counsel of the proposed relocation, and provide its customers and each affected municipality with notice and an opportunity to comment on the proposed relocation in the same manner as provided in proposed N.J.A.C. 14:3-5.1(e)2 for proposals to relocate or close an office. (RC)

RESPONSE: The Board believes that the demonstration to Board staff required under the rules is sufficient to ensure adequate customer service. The demonstrations required are not such that public input would significantly add to the quality of the Board's evaluation of whether a utility has met the standard in the rules. Therefore, the suggested change has not been made upon adoption.

164. COMMENT: The requirement in N.J.A.C. 14:3-5.2(a)4 that utilities provide a "control room emergency number" is problematic for a number of reasons. We have several control rooms around the state that have various types of equipment and capabilities. The control room operators may not have any information to provide to the Board during an emergency, certainly not all of the information the Board may need, and phone calls from regulatory staff and others during an emergency would inject an unnecessary and potentially dangerous additional amount of confusion into a given situation. We recommend that the emergency contact referred to in N.J.A.C. 14:3-5.2(a)3 consist of a group of highly qualified management personnel who are trained to respond to inquiries from regulatory staff and other emergency services and/or government personnel. Control room operators should be allowed to focus on their responsibilities and not have to leave their posts to field telephone calls. (NJAW) (EDCs)

RESPONSE: Multiple numbers can be submitted to cover regional or local control centers as needed. This is a reasonable request as the Board has past experience with other utilities and has caused no additional hardships in restorations. Please note that this would be a secondary point of contact and would be used if the primary number(s) from 14:3-5.2(a)3 was unavailable.

165. COMMENT: Proposed N.J.A.C. 14:3-5.2(a)(4) requires each utility to maintain "a control room emergency contact telephone number through which Board Staff can

...” We request clarification on the definition and scope of what is meant by a “control room.” (ETG)

RESPONSE: A “control room” refers to centralized operations which monitor system conditions, have access to restoration information including the number of outages, their location and restoration timeframes. For some large utilities this generally is a 24/7 operation, while for smaller utilities 24/7 monitoring may only be in effect during major outages.

166. COMMENT: N.J.A.C. 14:3-5.2(a)4: We have dedicated employee contacts for responding to Board requests, which are available 24 hours each day every day of the year. The Board should continue to use these contacts to address any concerns the Board may have. The requirement under N.J.A.C. 14:3-5.2(a)4 to provide the number for control room emergency personnel would only interrupt their primary responsibility, which is to maintain and restore service when necessary. If there are specific instances where communication has not been prompt or accurate, we would like the opportunity to work with the Board to review these instances and provide corrective action or additional contact points as deemed necessary other than the control room. Direct contact with control room employees by non-utility personnel will essentially create a dual reporting hierarchy which can lead to confusion, operational errors and interrupt the utility’s ability to ensure safe and reliable service. (NJUA) (ACE)

RESPONSE: Staff believes the proposed rule is reasonable as the Board has past experience with other utilities and has caused no additional hardships in restorations. Please note that this would be a secondary point of contact and would be used if the primary number(s) from 14:3-5.2(a)3 was unavailable.

SUBCHAPTER 6. RECORDS AND REPORTING

167. COMMENT: The first sentences in N.J.A.C. 14:3-6.2(g) and (h) should make explicit that the exception applies only to television service, or alternatively, make clear whether the exception applies to all services offered by the companies that qualify for the exemption. Both utilities noted in the exemption provide telephone service as well as television service. If a telecommunications company that has a system wide franchise in accordance with N.J.A.C. 14:18-14 is totally exempt from these regulations, it is unfair to other telecommunications companies who have not obtained a system-wide franchise. The same regulations should apply to all telecommunications carriers in a competitive environment. (MBQ)

RESPONSE: The rule provision implements N.J.S.A. 48:5A-28h(2), which exempts all cable television operators, and any telecommunications public utility that has obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14, from the entirety of N.J.A.C. 14:3-8. Further, the provision does not qualify the word “extension” by specifying any particular type of service that is carried by the extension. Therefore, these rules apply to all extensions constructed or installed by the entities covered by the provision. Any telecommunications company can apply for a system-wide franchise and would be exempt from these rules if they were to receive such a franchise.

168. COMMENT: N.J.A.C. 14:3-6.4 Accidents -initial reporting. Since there are very similar telephonic incident reporting requirements in N.J.A.C. 14:2, we suggest that only one telephonic notification be required. Currently, we must notify the Division of Reliability and Security for any One-Call or Bureau of Pipeline Safety matters. Not only is it more efficient and appropriate to require only one notification to the Board, it is important to remember that the utility supervisor responding to a reportable incident needs to focus primarily on controlling the unsafe condition and not expend precious time making multiple phone calls. (NJNG)

RESPONSE: The Board's one-call and pipeline safety bureaus have different statutory mandates regarding their responses to accidents. The one-call bureau is tasked with preventing damage to underground facilities of all kinds, whether the facility carries gas or any other substance. The gas pipeline safety bureau is mandated to carry out both State and Federal laws relating solely to gas lines. Therefore, staff from each bureau must be notified promptly of an accident that falls into both bureau's jurisdiction. Unfortunately, despite some efforts to coordinate with the appropriate State agencies, the Board has not as yet been able to obtain a system that can ensure that both bureaus will receive the relevant notices promptly and will not receive notices that should go to other bureaus. Unless and until the Board has such a system, the Board has found that the most reliable way to ensure that appropriate Board staff are notified of these emergencies is to include separate reporting for each bureau. The Board is confident that these reporting requirements will not seriously impinge on a utility's competent handling of these emergencies.

169. COMMENT: The requirement in N.J.A.C. 14:3-6.4 that companies report accidents no later than two hours after learning of the accidents even when they do not cause an outage seems unnecessary and administratively burdensome, especially coupled with the new N.J.A.C. 14:3-6.5 requiring follow-up reports on accidents. The reporting of any accident within two hours of learning of it does not appear to serve a public policy purpose and would impose administrative responsibilities upon the Board and carriers. The requirement to further provide follow up reports for any such accidents will compound this burden and impose unnecessary tracking for both the BPU and carriers for even the most minor, insignificant "accident." Reporting of accidents on a semi-annual basis similar to customer service reports would be more practical and likely more useful to the Board. We recommend that these provisions be revised accordingly. (NJCTA)

RESPONSE: The rules define accidents as follows:

- i. Death of a person;
- ii. Serious disabling or incapacitating injuries to persons, including employees of the company;
- iii. Damage to the property of the company which materially affects its service to the public;
- iv. Damage to the property of others amounting to more than \$ 5,000; and/or
- v. Any accidental ignition of natural gas.

These are no small matters, despite the fact that they may not always result in an outage. One of the Board's responsibilities is to safeguard the public and ensure that utilities operate in a safe manner. Staff must investigate accidents, and often these investigations require staff to be dispatched immediately to the scene of an accident. As the entity mandated by the State to oversee utilities, it would be irresponsible of the Board to make the commenter's recommended change.

170. COMMENT: The incident reporting requirements in proposed N.J.A.C. 14:3-6.6 in some instances could result in a duplication of the reporting requirements of N.J.A.C. 14:2 and existing utility practice. To ensure consistency and to avoid confusion by the field personnel required to provide reports of gas events, we propose the addition of the following section to N.J.A.C. 14:3, which is consistent with language already contained in N.J.A.C. 14:2:

14:3-6.9 If there is an inconsistency between the reporting procedures between the reporting procedures in N.J.A.C. 14:2 *et seq.* and those in this subchapter, the more stringent requirements shall apply. (ETG)

RESPONSE: As discussed in the response to comment 168. **COMMENT:** , the different Board bureaus implement different statutory mandates and thus require information that may overlap but is not identical. Therefore, to facilitate the Board's fulfillment of its mandates, it is necessary that utilities submit both types of reports.

171. COMMENT: N.J.A.C. 14:3-6.7: Reporting suspicious acts may impose additional costs on utilities. We are evaluating how to comply with the proposed changes and may make further recommendations on this section. We note that item 6 "Any other incident that has a potential nexus to terrorism" is so overbroad as to be meaningless, and recommend that this item be removed or, at a minimum, closely re-examined and repropose. At a minimum, the words "as determined by the utility" should be added to the end of N.J.A.C. 14:3-6.7(a)6. Also, The 10-year Retention of Records Requirement is too long. (NJAW) (EDCs)

RESPONSE: The Board agrees that N.J.A.C. 14:3-6.7(a)6 is impracticably broad, and that it could be extremely difficult, if not impossible, for a utility to determine whether an incident has a potential nexus to terrorism. Therefore, this paragraph has been deleted upon adoption. The idea of having records going back 10 years is that if an attack occurs, records would exist if pre-operative planning or surveillance was conducted prior to the event. A series of incidents at the same location over a series of years may point to this type of planning. In addition, the Board does not anticipate a large number of these records for each year, so this requirement should not be burdensome.

RESPONSE:

172. COMMENT: N.J.A.C. 14:3-6.7. We already have established and currently comply with industry "best practices" for critical infrastructure protection. The utilities should have the responsibility to determine if a particular event is a threat to their property. We suggest that a working group be put together by the Board with its

staff, utility representatives and other key stakeholders to examine current best practices by each type of utility and determine whether they are sufficient. As proposed, this section contains language that is unclear such as “any other incident that has a potential nexus to terrorism,” while other language is arbitrary and impractical such as the six hour reporting time frame. While we applaud the Board for attempting to address the ongoing threat of terrorism, the need for and benefit of this proposal is unclear. We request that this provision be deferred pending its discussion with the industry and key stakeholders. (NJUA) (ACE) (MBQ) (EDCs)

RESPONSE: This rule will standardize security-related reporting requirements across all of the Board’s regulated utilities, and will enable Board staff to establish situational awareness in the event of a single or coordinated security incident. Board staff’s past experience with the reporting of security related incidents leads the Board to believe that this rule will not be burdensome to the utilities. It is anticipated that under normal circumstances a utility would only have to contact the Board two or three times a year, at most. As discussed in comment 171. **COMMENT:** above, paragraph 6 has been removed upon adoption. The basic concepts in this section were discussed with various water, electric, natural gas and telecommunications companies in late 2006 and early 2007, and staff considered these discussions while drafting the provisions.

173. COMMENT: The six hour time frame to report the incidents listed in N.J.A.C. 14:3-6.7(a) is an arbitrary number that is too short. It takes time to investigate an incident and to determine if a Suspicious Act has occurred. The words “within six hours” should be replaced with the words “as soon as practical.” Theft of an identification document (e.g. Company Photo Identification Credential), badge or uniform(s) has occurred during criminal activities (a hold-up, the break-in of a vehicle) not as a result of terrorist activities. (EDCs)

RESPONSE: The list of incidents that require reporting within six hours is quite specific, and does not require the utility to analyze or investigate anything, but merely to alert the Board that the incident has occurred. It is certainly true that any of these incidents, including theft of an ID badge, can and will occur in contexts unrelated to terrorism. However, the Board cannot detect patterns of behavior, or respond to multiple events that may be related, without the types of information required under this rule. Therefore, the commenters’ suggested changes have not been made.

174. COMMENT: N.J.A.C. 14:3-6.7(a)4: For clarity, we recommend that note taking or audio recording only be reportable if performed by a suspicious individual or individuals. (EDCs)

RESPONSE: Utilities should not be held responsible for determining such things as whether individuals seem suspicious or not. In fact, the Board has deleted upon adoption the one provision in this section that would have required utilities to try to make these assessments (N.J.A.C. 14:3-6.7(a)6). These types of risk assessments should be conducted by trained Board staff who have the mandate and the resources to focus on these matters. The rules are intended merely to ensure that utilities alert

Board staff of events that may be significant when evaluated by trained staff, or when viewed in the context of patterns over time or around the region,

175. COMMENT: N.J.A.C. 14:3-6.7(a 5: Intentional damage to utility equipment could be inflicted by an individual that has a vendetta against the utility, such as someone who has been shut-off for non-payment and destroys their electric meter. We recommend that the first sentence of this paragraph be re-written to read: "Significant damage to any utility facilities or equipment in the utility's critical infrastructure as a result of an intentional act that could impact reliability." (EDCs)

RESPONSE: The commenters' suggested change would limit the incidents reported so severely that it would exclude many incidents that could, when viewed in light of patterns over time or around the region, be useful indicators of suspicious activity. Therefore, the suggested changes have not been made.

SUBCHAPTER 7. BILLS AND PAYMENTS FOR SERVICE

176. COMMENT: N.J.A.C. 14:3-7.1(f) – Our current bill format cannot accommodate this requirement. The message required in N.J.A.C. 14:3-7.1(f) takes up more than one-third of a standard page. At a minimum, inclusion of such a message in the font size stated would require an additional page, increasing processing and mailing costs. One commenter suggested the requirement should be deleted or at least modified to remove the 36 point font requirement. One commenter suggested that the statement be printed in bold print at half the suggested size and satisfy the Board's desire to ensure all customers are informed, while at the same time supporting the Board's conservation of energy and resources policies. It should be noted that the same contact information will be available in all telephone directories. (NJAW) (ACE) (MBQ) (PSEG)

RESPONSE: The Board agrees that this requirement should be modified. Since this change is substantive, it cannot be made upon adoption under the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Therefore, the Board has proposed an amendment to this provision in a companion proposal in this issue of the New Jersey Register.

177. COMMENT: N.J.A.C. 14:3-7.1(f) should be modified to read 'This utility provides some services that are regulated by the New Jersey Board...'. The proposed language suggests to customers that the Board regulates all services provided by a company when this is not the case (e.g., inside wire which has been deregulated). (MBQ)

RESPONSE: The Board agrees that the statement as proposed could be misinterpreted, and has modified the statement upon adoption to make it more precise.

178. COMMENT: N.J.A.C. 14:3-7.2(b)7 lists the acceptable forms of meter reading that are to be used in calculating customer bills. We strongly suggest that the phrase "actual meter reads" be used in place of "electronic readings" in light of the continued need to conduct manual meter readings for many customers. (NJNG) (NJUA)

RESPONSE: This list merely provides examples to illustrate that the bill must state the method of calculation. It does not require or prohibit the use of any particular method of calculating a bill.

179. COMMENT: N.J.A.C. 14:3-7.2(d) requires a meter reader to leave a written notice for the customer near the customer's door. The proposed rule change poses serious safety concerns for meter readers and customers. Currently, if a meter reader is unable to gain access, the customer will receive a bill with a notification that the bill was estimated. In addition, the customer receives notification when five consecutive months of estimates are reached and again when seven months of estimates are reached. We have bill inserts saying you can call in your meter read. We have an annual schedule of all of our inserts and they're mixed in with the call before you dig and seal up and save and the energy conservations, the low income assistance programs. We try to mix our messages up because we have a better retention rate if you mix them up. This has proven to be a successful method of alerting a customer that we have been unable to gain access to read the meter. Leaving a written notice near the customer's door is a broadcast to others that the person receiving the notice is not home, which is likely to create privacy and home security issues for its customers. The rule is particularly problematic when it comes to multi-family dwellings. Under the new rule, a meter reader will have to visit each apartment of that multi-family dwelling and leave a notice for each customer. This exposes the meter reader to additional safety risks by causing them to travel up and down secluded stairways and hallways. Also, this will encourage customers who live in multi-family dwellings to read meters which may be located in dark basements or other hazardous locations which they have not previously visited. We will need additional people, including meter readers, to comply with this new requirement, which will have a financial impact on us and ultimately ratepayers. A situation with a multiple family scenario, the tenant may, in fact, not have access to the basement because it's a landlord scenario, where the landlord basically has access. So providing the card itself, encouraging them to read the meter might be rather moot if they can't get in to read the meter. (PSEG) (NJNG) (NJUA) (ACE)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

180. COMMENT: Proposed N.J.A.C. 14:3-7.2(d) would require utility meter readers to leave a conspicuous written notice near an entrance to the building whenever they are unable to read a customer's meter. At the public hearing held November 1, 2007 a utility representative raised objections to this proposal, asserting that a conspicuous notice would pose a security risk to customers, that customers already receive other notices when their meter readings have been estimated and that the additional requirement would be too costly. Some of these concerns may have merit, and, further, a mail-in reply card might not reach the utility in time to be reflected on the current bill. As an alternative, we recommend that the utilities be required to enhance their efforts to secure customer meter readings by telephone and electronic mail. It is our understanding that the utilities already use automated telephone calls or e-mails for collection purposes. The utilities could use this technology to request that customers call in meter readings. (RC)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

181. COMMENT: For meters that are located within the residential or commercial unit and are readily accessible, it would be the rare case where the company would receive via the US Mail missed meter readings in sufficient time to amend the billing run to reflect the customer read. In the rare occasion where it is practical for a customer to read his own meter, the read should be phoned into the Water Company. (SWC)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

182. COMMENT: Proposed N.J.A.C. 14:3-7.2(d) would require a meter reader to leave a written notice in a conspicuous location near the entrance to the building when they are unable to read a customer's meter. The proposal is duplicative of N.J.A.C. 14:3-7.2(e)2, which requires the utility to provide a business reply card and telephone number to be used by a customer to provide meter readings. Furthermore, the customer is already afforded protection from future high bills under N.J.A.C. 14:3-7.2(e)5 wherein they are allowed to amortize the excess amount resulting from a prior estimated bill. To support our objective of improving customer service and satisfaction levels, we have recently invested in technology improvements which allow us to offer three convenient, cost-effective options to customers whose meters were unable to be read or who choose to do it themselves. Customers can request a meter card in writing, by telephone or via e-mail and mail in their readings; they may use our "Fast Call" system - a 24/7 automated telephone service which provides a convenient way for customers to enter their reading; and we also offer a "Fast Bill" system for customers to report readings through our website. All of these options are free of charge. Customer security, weather and cost issues need to be reconsidered regarding this notice requirement. Additionally, the proposed amendment assumes that access to the meter was obstructed preventing the utility from reading the meter. In situations where meters are not read due to inclement weather or employee absence, it would be onerous to require utilities to send an employee to each customer's property to deliver the written notice required. Utilities should be exempted in these situations. As an alternative, we suggest that information be provided with the customer's estimated bill, explaining the resources available to them to submit an actual meter reading to the utility. (SJG-W) (SWC)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

183. COMMENT: Many water meters are located at or near the curb line in secure meter pits. Readings are normally attained by touch pads or direct access to the meter utilizing a special tool. Customers do not have access to electronic meter reading devices nor do they have access to specialized tools to open customer owned meter pits. The use of common household tools will potentially damage the meter lid, create a hazard and cause additional expense to the customer. A practical situation where a customer could read their own meter and might benefit from the proposed notice requirement would be when the Water Company can not access a touch pad for an inside meter due to a locked gate or the presence of a dog. (SWC)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

184. COMMENT: Proposed N.J.A.C. 14:3-7.2(e)2 should require utilities to enhance efforts to provide customers with pre-paid meter reading reply cards in advance of meter reading dates. The current provision requires that prepaid reply cards be supplied upon request. This provision could be amended to require utilities to affirmatively offer this option to customers who frequently receive bills based on estimated meter readings. (RC)

RESPONSE: Please see the response to comment 185. **COMMENT:** below.

185. COMMENT: Regarding notices of meter reading, when estimated bills have been going on for several months and there's a substantial back-billing situation that arises as a result, that can be a significant hardship for a low income customer, so knowing about that early is important. The post office and federal express and UPS can routinely leave notices on people's doors that there's a package to be delivered. Why can't utilities do that just as well? (LSNJ)

RESPONSE: To comments 179 through 185: Based on the many issues and obstacles raised by commenters on this issue, the Board has not adopted the requirement at N.J.A.C. 14:3-7.2(d). The Board agrees with the commenters that it is very important to provide customers with every opportunity to ensure accurate meter readings as often as possible. However, the commenters raise legitimate safety concerns for both utility meter readers and customers. Also significant are the commenters' privacy concerns, and the problem of access to pit water meters and multi-family housing utility meters. Finally, as noted by many commenters, there are many other available methods of informing customers of their option to mail, e-mail or phone in their meter readings, including both routine and targeted bill inserts, some of which are already required or have been voluntarily implemented. These methods have substantially fewer cost and safety implications, and may actually be more effective than the proposed postcard requirement. Based on these concerns, the requirement has been removed from the rules upon adoption. Instead, the Board encourages utilities to utilize the various commenters' suggested enhancements to the procedures for informing customers of their existing options for self-reporting meter readings, such as the use of telephone or e-mail reminders to customers; and the use of telephone, e-mail or web-based methods for customers to report meter readings.

186. COMMENT: In N.J.A.C. 14:3-7.2(f), there is a reference to a utility using "a human to read meter indices for billing purposes." While this modification is clearly an attempt to make a distinction between a remote meter display and the meter itself, the modification begs several questions. For example, is a "human" reading a device if the meter reader uses a hand-held scanner or wand, and touches the device to the meter? Does the meter reader need to visually inspect the meter indices? Are radio frequency devices more or less reliable than visual inspections followed by manual recordings? We recommend that the Board request specific recommendations from each utility industry as to the most efficient and reliable ways to collect customer consumption data, analyze that information, and use it to make a recommendation that will yield true productivity and reliability gains for all stakeholders. The proposed

change here, by itself, creates more questions and confusion than it resolves.
(NJAW)

RESPONSE: The Board agrees that the provision as proposed is vague and could cause confusion. The cited text seems to contradict the prior sentence, which applies to “any plan, automated or otherwise...” However, the cited text then seems to say that the provision applies only to plans that are not automated, that is, to a plan under which “the utility is not required to utilize a human to read meter indices...” Therefore, the Board has removed the clauses referred to by the commenter.

187. COMMENT: N.J.A.C. 14:3-7.5: In the summary of Subchapter 7: Bills and Payments for Service, the paragraph that begins "Existing N.J.A.C 14:3-7.11A, which provides for budget billing plans for residential customers " states that "existing N.J.A.C 14:3-7.11A(b) is proposed for deletion because it provides an exception that applies only to budget billing plans that are by now expired. No authority to support that statement is given. and there were no plan durations or expiration dates contained in the rules (either current or as proposed), so it is unclear on what basis that conclusion has been drawn. (NJAW)

RESPONSE: The provision deleted in the proposal applied to customer budget billing plans that were in effect as of the effective date of the previous rules, which was July 31, 2002. All of those budget billing plans should by now have expired and gone through the true up process set forth in N.J.A.C. 14:3-7.5(b). Because this adoption did not change the budget billing plan requirements in a way that could affect existing customer-specific budget billing plans, there is no need under these rules for utilities to reopen existing, customer-specific budget billing plans. However, this section has been modified upon adoption to clarify the distinction between the utility's budget billing plan program description and each customer-specific budget billing plan.

188. COMMENT: Proposed N.J.A.C. 14:3-7.5(g)3 requires a utility to compare the monthly budget billing amount to the customer’s actual cost of service rendered at least once during the budget billing year, and adjust the monthly budget amount if the comparison reveals an increase or decrease of 25 percent or more of in the monthly budget amount. In view of the current high utility costs, 25 percent can be a large dollar amount. We recommend that the threshold for requiring a change in the monthly budget amount be changed to 10 percent. (RC)

RESPONSE: In Board staff's experience, the 25 percent requirement has been sufficient to avoid major problems for budget billing plan customers. In addition, the rule does not prohibit a utility from adjusting a budget plan payment when changes of less than 25 percent are detected. The commenter's suggested change would reduce flexibility for the utility and the customer to arrange a budget plan tailored to the individual customer.

189. COMMENT: N.J.A.C. 14:3-7.6: If someone who has already suffered a termination has a dispute, and the previous termination is not related to the current dispute, what are the realistic approaches for someone to raise their dispute, have it

determined, but at the same time not be living without their vital utility services.
(LSNJ)

RESPONSE: The rules are designed to protect customers from shutoff in these circumstances. As long as the customer follows the procedures in the rules and pays the portion of the bill that is not in dispute, the rules prevent the utility from disconnecting the customer. In addition, should a utility shut off such a customer erroneously, N.J.A.C. 14:3-3A.9(b) gives Board staff the authority, on a case-by-case basis, to direct a utility to restore service within 12 hours when a complaint is pending before the Board.

190. COMMENT: We thank the Board for maintaining the provisions at N.J.A.C. 14:3-7.6 that customers cannot dispute the entire bill, but must continue to pay any undisputed portions of their bills. (NJUA) (ACE)

RESPONSE: The Board appreciates the commenter's support of the rules.

191. COMMENT: The regulations should provide a means for a customer to determine what, if any, amounts remain undisputed pending resolution of disputes. We recommend that the following language be added at the end of N.J.A.C. 14:3-7.6(a):

Should there be any question as to the amount in dispute, the Division of Customer Relations will make a reasonable estimate of the amount in dispute and the undisputed charges. Deferred payment agreements shall be available for payment of undisputed charges pending resolution of the dispute. (LSNJ)

RESPONSE: Please see the response to comment 192. **COMMENT:** below.

192. COMMENT: N.J.A.C. 14:3-7.6 should include a statement that customers who are disputing consumption or volumetric charges should, by definition, be required to pay the fixed service charge since that portion of the bill is not being disputed. (NJAW)

RESPONSE: In Board staff's experience, it is very difficult to define prospectively the class of charges that will never be in dispute. A utility bill can include many different charges other than the charge for the commodity (e.g., electricity, gas, etc.) that the customer has used. These other charges may include taxes, a social benefits charge, delivery fees, etc. Many of these charges vary based on the amount of the commodity the customer has used during a billing period. Therefore, the Board cannot include a simple description of nondisputable charges in the rules. However, utility customer representatives routinely assist customers to determine which charges on a bill may and may not be disputed. Should a customer need further assistance in this regard, the Board's Division Of Customer Assistance is also available to help with this determination.

193. COMMENT: Electric, gas and water utilities devote large amounts of capital and maintenance dollars to making sure that their meters are accurate. Periodic testing as well as location specific testing is routinely conducted. Flat rates and fixture counts formerly used to determine a customer's bill have been replaced by the use of meters. Advances in technology have enhanced accuracy and extended the lives of

meters. An arbitrary adjustment to metered consumption undermines the need for meters and perpetuates the squeaky wheel syndrome and increases the volume of customer complaints. Meter readings, if determined to be accurate, must overwhelmingly be the basis for the consumer's bill. (SWC)

RESPONSE: It is not clear whether the commenter is suggesting a change to the rules. However, the Board agrees that accurate meter readings are the best basis for a customer's bill.

194. COMMENT: N.J.A.C. 14:3-7.6(b) should be modified to read "shall notify the customer on the call that:." First, to establish a written notification process is very costly and burdensome. It not only requires postage and a printing process, but a new data base to track who received the written notification. Secondly, the process to print and mail a written notification may not reach the customer before the five day limit from the utility contact is expired. Informing the customer while they are on the phone call is not only the most economical process, it gives the customer the greatest amount of time to decide if they want to further pursue an investigation by the Board. (MBQ)

RESPONSE: Please see the response to comment 197. **COMMENT:** below.

195. COMMENT: We applaud the Board for requiring a 5-day timeframe for customers to seek an investigation if the dispute cannot be resolved between the utility and the customer. To clarify this section further, we request that this section specify that the customer has five business days and that the utility may notify the customer verbally of the customer's right to seek an investigation. (NJUA) (ACE)

RESPONSE: Please see the response to comment 197. **COMMENT:** below.

196. COMMENT: N.J.A.C. 14:3-7.6(b) contains a confusing set of time frames. It is not clear from the proposed changes where the written notification fits in compared to the requirement for customers to file a complaint within five days of a notice of disconnection in order to avoid having their service shut off. (NJAW)

RESPONSE: Please see the response to comment 197. **COMMENT:** below.

197. COMMENT: N.J.A.C. 14:3-7.6 Disputes as to bills. While we are pleased overall with the continuation of the provisions in this section related to ongoing payment obligations during a bill dispute, there are some suggestions that we feel would clarify and strengthen the intent of these proposals. N.J.A.C. 14:3-7.6(b) should allow verbal, rather than written, notification by the utility to the customer about procedures for handling disputed portions of bills. A notation can be made in the utility records as to the date and content of the verbal notice. Given the five-day time frame in which a customer can notify the Board about an unresolved dispute, we are concerned that written notice will not provide sufficient time for that to occur. (NJNG) (ACE) (PSEG)

RESPONSE: The Board appreciates the commenter's support for the rules. The addition in proposed N.J.A.C. 14:3-7.6(b) of a new requirement that a utility's notice to a customer of bill dispute procedures must be in writing was erroneous. As stated in the proposal summary at 39 N.J.R. 4081, the proposal was intended to recodify

and clarify these provisions, but not to change their meaning. In addition, the commenters are correct that requiring written notice would make it virtually impossible for customers to comply with the deadlines included in the bill dispute procedures themselves. Therefore, the words "in writing" have been deleted from the rules upon adoption.

198. COMMENT: We suggest a modification to N.J.A.C. 14:3-7.6(b)2 to indicate that notification from the utility to the customer concerning their right to request an investigation should be made within five business days. That provides a more workable time frame in those instances, for example, when a customer notifies the utility of a potential bill dispute on the day before a three-day weekend or holiday period. The suggested language (in bold) is as follows:

2. The request for investigation must be made within five **business** days after the customer contacts the utility to dispute the charges; and... (NJNG)

RESPONSE: The first sentence of this comment addresses the time within which the utility must notify a complaining customer of their right to request a Board investigation. However, the commenter's suggested language addresses the time within which a customer must request a Board investigation. As discussed in the response to comment 197. **COMMENT:** , above, the requirement that the utility's notice to the customer be in writing was an error and has been removed upon adoption. Therefore, the utility can, and typically does, inform the customer during the initial telephone complaint of the customer's rights to request a Board investigation. In addition, as discussed in the response to comment 115 above, the Board has clarified the rule upon adoption to indicate that the customer must request the investigation within five business days. These two modifications adequately address the timing problem that the commenter has identified.

199. COMMENT: N.J.A.C. 14:3-7.6(g) should be rewritten to place the proper emphasis on the actual customer meter reading as follows: When the amount of electric, gas, water, or wastewater bill is significantly higher than the customer's established consumption history, the customer's established consumption pattern [shall] **may** be given consideration in addition to the results of any tests of the customer's meter. (SWC)

RESPONSE: The rule as proposed and adopted merely requires the utility to consider the customer's established consumption, it does not mandate that the utility use this as the only determinant of whether a bill is correct. The Board believes that this provides the utility with sufficient flexibility, so the commenter's suggested change has not been made.

200. COMMENT: Proposed N.J.A.C. 14:3-7.6, governing customer disputes, should require that:

1. utility responses be provided promptly to the customer,
2. utilities respond to customer disputes by setting forth the reasons for the utility's position in writing and providing relevant documents,
3. the Division maintain a file containing all of the information in its possession relating to each dispute and

4. the customer have the right to review and copy all of the information in the file, with a free copy made available to low-income customers and Legal Services advocates.

Many other states, including New York, provide for such reasonable procedures in their regulations. (LSNJ)

RESPONSE: In crafting procedures for the handling of customer disputes, the Board must balance the goal of speedy resolution of disputes against the goal of ensuring fairness to all parties. As suggested in the commenter's item 1, N.J.A.C. 14:3-7.6(b) provides for quick notice to customers when a dispute remains unresolved after a complaint to the utility. The commenter's suggested requirements for a utility to provide a written explanation and documentation (item 2 above), these are provided to Board staff during the investigation that is triggered by the customer's request for an investigation under N.J.A.C. 14:3-7.6. To require that these be provided to the customer prior to the customer's contact with the Board would substantially lengthen the process, often to the detriment of the customer. Regarding the commenter's item 3, Board staff always keep a file on any investigation requested regarding bills in dispute. Finally, regarding the commenter's item 4, the release of the file to the customer, the public, and Legal Services advocates is governed by the Board's Open Public Records Act (OPRA) rules, found at N.J.A.C. 14:1-12. Those rules provide for prompt and easy access to Board files and documents that are not claimed as confidential by those who submit them.

201. COMMENT: N.J.A.C. 14:3-7.7(b)1: In negotiating a deferred payment plan, the 25 percent rule is sometimes exceeded because a customer negotiates with the utility on their own, and is unaware of their rights under these rules. Sometimes the first step is just bringing someone to the basic knowledge that the Board of Public Utilities is a place where disputes can be resolved. I commend the board for having enhanced the dispute procedures and especially the formal dispute procedures over the past several years. It's clear that people are actually bringing formal petitions, and taking cases to the administrative law judges. The consumer assistance division has been helpful in that regard. (LSNJ)

RESPONSE: The Board appreciates the commenter's support for the rules.

202. COMMENT: N.J.A.C. 14:3-7.7(a), (b)1: Deferred payment plans are important for customers seeking to maintain basic utility services and for utilities as a means for collecting legitimate debts. Unaffordable payment plans fulfill neither purpose. The current and proposed regulations limit the down payment that can be required to no more than "25 percent of the total outstanding bill due" at the time the agreement is made, and requires an agreement that "takes into consideration the customer's financial circumstances." In our experience, unaffordable payment plans -- involving both demands for down payments exceeding 25% of the amount due and extraordinarily high monthly payments -- are routine. We have encountered purported agreements with welfare recipients requiring payments of \$200 per month toward arrears, and heard utility company personnel state that they do not consider the customer's financial circumstances in connection with deferred payment agreements. Several provisions used in other states would vastly improve the current provisions

for deferred payment agreements and help to eliminate abusive collection practices. For example, New Jersey should adopt Pennsylvania's income-sensitive guidelines for payment agreements, which range in length from six months to five years. (LSNJ)

RESPONSE: The Board agrees that deferred payment plans must be affordable, and that is the basis for the requirement that the down payment may not exceed 25 percent of the total arrears. The Board encourages the commenter to refer customers that have experienced noncompliance with the rules to complain to the Board so that the Board can monitor and enforce compliance with this requirement.

203. COMMENT: There should be no maximum length to a deferred payment agreement under N.J.A.C. 14:3-7.7(b)6. It appeared during the course of the Board's Universal Service Fund proceedings that there is a custom of setting a maximum length for deferred payment agreements at 12 months. (LSNJ)

RESPONSE: N.J.A.C. 14:3-7.7(b)6, as proposed and adopted, applies only to non-residential customers. These customers are better equipped to negotiate with the utility, and also tend to have much higher bills than residential customers. Therefore, the Board believes that this provision is appropriate and reasonable. There is no maximum length to a deferred payment agreement. However, the utility and the customer must negotiate each agreement on a case-by-case basis in order to appropriately accommodate the facts of each case and the situation of each customer. The rules provide flexibility for this.

204. COMMENT: N.J.A.C. 14:3-7.13(f), and similarly N.J.S.A. 48:3-2.3, prohibit a utility from assessing a residential late payment charge. Because the statute does not apply to companies operating under a plan of alternative regulation (PAR), the Board should modify this rule to allow PAR companies to assess residential late payment charges. These late paying customers impose significant costs on ILECs, costs which are ultimately borne by all customers. A late payment charge would encourage timely payment from delinquent customers and allow recovery from the cost causer. In addition, a late payment charge would allow us to compete on equal footing with competitors, like cable companies that are permitted to assess late payment charges on delinquent bills and, therefore, have a more certain and steady income stream. (VZ)

RESPONSE: The prohibition on late payment charges in N.J.A.C. 14:3-7.13 is in accordance with N.J.S.A. 48:3-2.3, which states that the Board shall not allow a utility to assess a late payment charge on unpaid bills unless such charge is provided for in the utility's applicable rate schedule approved by the Board. The rule applies to all telecommunications service carriers to the extent their rates are approved by the Board and is intended to protect residential customers and State, county or municipal government entities.

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

205. COMMENT: The Board should clarify whether N.J.A.C. 14:3-8.1(d)2 means that telecommunications public utilities who qualify are totally exempted from all of

Subchapter 8 for all the services that they provide. Cable companies argued that they were greatly disadvantaged because their competitor, dish or satellite TV service, was not required to comply with the Smart Growth regulations. Today, cable companies are subject to limited Smart Growth regulations while telephone service providers are still required to comply with all of the Smart Growth requirements. Cable companies in non-Smart Growth areas are able to cut better deals with developers because they have limited Smart Growth requirements and have more flexibility to charge lower rates to provide telephone service extensions. Because of this direct competition, telephone service providers should be under the same Smart Growth requirements as the cable companies. (MBQ)

RESPONSE: As discussed in the response to comment 167. **COMMENT:** above, the rules implement N.J.S.A. 48:5A-28h(2), which exempts all cable television operators, and any telecommunications public utility that has obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14, from the entirety of N.J.A.C. 14:3-8. Therefore, any telecommunications company can apply for a system-wide franchise and would be exempt from these rules if they were to receive such a franchise.

206. COMMENT: N.J.A.C. 14:3-8.2: The references to cable equipment in the definition of the “plant and/or facilities” should be deleted to conform with the premise that subchapter 8 does not apply to companies operating cable television systems. The references to cable equipment in the definition of “extension” should also be deleted. (NJCTA)

RESPONSE: The use of the word “cable” in the term “cable television” is only one of many uses and meanings of the word “cable.” For example, the wires used to steady and secure telephone poles to the ground are often referred to as cables. Therefore, the use of this word in the definition of “extension” and “plant and/or facilities” does not necessarily refer to cable television, and has not been removed upon adoption.

207. COMMENT: N.J.A.C. 14:3-8.3 should make clear that the customer is required to provide initial vegetation and site preparation work. If the utility performs this work on behalf of the customer it should be allowed to bill the cost of such work to the applicant. Otherwise, ratepayers in general would be footing the bill for costs that have in the past been borne by the applicant. (NJUA) (ACE)

RESPONSE: Please see the response to comment 208. **COMMENT:** below.

208. COMMENT: The responsibility to clear vegetation should be borne by the applicant. Clearing the right-of-way will potentially add significant and unnecessary cost to the installation of an extension. There is no valid reason for these costs to be borne by the utility, and ultimately the company’s ratepayers, especially when the subject extension is for commercial or industrial use. (NJNG) (EDCs)

RESPONSE: As noted by the commenter, N.J.A.C. 14:3-8.3(f) includes site preparation as one of the components of the construction of an extension. Therefore, in an area not designated for growth, the utility is forbidden to pay for site preparation, or for any other part of the extension. In an area designated for growth,

the utility would negotiate with the applicant for service to determine the responsibility for site preparation, or could apply the applicable suggested formula in N.J.A.C. 14:3-8.9. In designated growth areas, the applicant and the regulated entity can come to a mutual agreement as to the cost of the extension or can apply the suggested formula. In either instance, the initial vegetation and site preparation work can be done by the applicant at his/her expense, or by the regulated entity at their expense, but that expense would be factored into the agreement or suggested formula.

209. COMMENT: N.J.A.C. 14:3-8.3(a) requires the utility to provide copies of the applicable regulations pertaining to service extensions prior to the acceptance of an application. This condition has remained unchanged in the Board's regulations for a number of years. While we remain supportive of providing customers with this information, we believe the current method has become burdensome, is not cost effective and is not taking advantage of today's information technology. We suggest that the Board direct companies to post the regulations on their web site and refer customers to the regulations prior to the acceptance of an application. The requirement could also include a provision which would require that copies of the regulation be supplied via traditional mail or e-mail at a customer's request. (SJG-W)
RESPONSE: Regulated entities can provide applicants for extensions an electronic copy of the rules if the applicant so requests

210. COMMENT: Proposed N.J.A.C. 14:3-8.5. The current regulation permits a utility to construct an extension with more capacity than requested by the applicant, and charge the applicant for the excess capacity. The Board is proposing an amendment at N.J.A.C. 14:3-8.5(h) that would prohibit this practice when an extension is constructed in an area designated for growth under the State's Smart Growth policy. We support this change. (RC)
RESPONSE: The Board appreciates this comment in support of the rules.

211. COMMENT: For extensions in areas not designated for growth, proposed N.J.A.C. 14.3-8.5(i) would allow a utility to construct excess capacity and require the applicant to pay for the excess, whether or not the applicant needs or requests the additional capacity. This provision would appear to encourage the addition of facilities beyond what is needed in areas where the State's policy is to discourage growth. Further, it would place the burden on customers to pay for facilities they do not need and have not requested. N.J.A.C. 14.3-8.5(i) should prohibit a utility from forcing the construction of excess capacity in non-growth areas at customers' expense. Furthermore, proposed N.J.A.C. 14.3-8.5(j) should be amended to assure that, if a utility opts to build and pay for excess capacity in a non-growth area, the cost will not be borne by the utility's other ratepayers. The rules should provide that the utility may seek to recover the costs of the additional capacity only from future applicants for extensions, and that such costs shall not be recovered in the rates charged to the entity's other ratepayers. (RC)
RESPONSE: N.J.A.C. 14:3-8.5(i) and (j), read together, are intended to allow a utility to construct infrastructure capacity needed to plan for future development, while avoiding ratepayer subsidization of utility capacity in areas not designated for

growth. Long range infrastructure planning minimizes utility costs and thus saves ratepayers money. However, if utilities are encouraged to build unnecessary excess capacity in areas not designated for growth, the ultimate result will be higher costs for ratepayers. The rules are intended to balance these two factors. To ensure that utilities build only infrastructure that has a high likelihood of being needed to serve future customers, N.J.A.C. 14:3-8.5(i) emphasizes that the Board will review these expenditures carefully before allowing the utility to recover them in rates.

212. COMMENT: In N.J.A.C. 14:3-8.6, regarding costs for extensions serving an area not designated for growth, we propose an additional exemption as follows:

An extension of public water service shall be exempt from the requirements to serve development in an area not designated for growth, as set forth in N.J.A.C. 14:3-8.6, provided that the purpose of the extension is to allow for the replacement of an otherwise contaminated water source, unfit for potable use, in one or more structures that were built and occupied prior to March 20, 2005; or if built after March 20, 2005, it can be documented that the water source was potable at the time of the issuance of Certificate of Occupancy but has since become nonpotable. (NJAW)

RESPONSE: There are already exemptions set forth at N.J.A.C. 14:3-8.8(h) and (i) for projects that would result in a significant public good or an extraordinary hardship that may cover the situation the commenter describes. Therefore, no change to the rules is necessary.

213. COMMENT: N.J.A.C. 14:3-8.6 prohibits utilities from providing financial assistance to customers for extensions of service in areas designated as "Non-Smart Growth." They require that all costs be paid for by the customer requesting service. This has a significant impact on the way we conduct business since approximately 75% of our service territory is designated as "Non-Smart Growth." This places natural gas utilities at a competitive disadvantage and conflicts with the goals and objectives established by the state during the New Jersey Energy Master Plan process. The cable and telecommunications industries have been statutorily exempt from the Board's main extension regulations recognizing the competitive nature of their businesses. Similar to the cable and telecommunications industry, natural gas utilities operate in a competitive environment where customers have the opportunity to choose electric, oil or propane as their heating source. Our experience to date has indicated the Board's main extension regulations have not prevented building in areas designated as Non-Smart Growth, but instead are opting to utilize alternative fuel sources such as propane and heating oil at the time of construction in order to avoid higher housing costs. These are less environmentally friendly fuels, going into geographical areas that the State is seeking to protect. We urge the Board to acknowledge the competitive marketplace natural gas utilities operate within and exempt them from the requirements in this section. (SJG-W)

RESPONSE: Please see the response to comment 214. **COMMENT:** below.

214. COMMENT: N.J.A.C. 14:3-8.8(j) exempts an extension of natural gas service from the cost requirements of extensions serving an area not designated for growth, for the replacement of existing appliances using energy sources other than natural

gas to natural gas appliances, in older structures. In effect, this provision prohibits the financial assistance to homeowners for conversions of new construction housing in areas designated as Non Smart Growth for a period of 15 years. We suggest that the Board reconsider the 15 year provision. When considering the anticipated advancements in energy efficiency technology coupled with the 15 year conversion factor, the loss of potential conservation opportunities becomes significant. The importance of these opportunities becomes magnified as New Jersey sets aggressive goals and investigates methods to reduce energy consumption by 20% by the year 2020. We urge the Board to permit exemptions on all extensions with the sole purpose of converting to natural gas appliances. As an alternative, we suggest that exemptions be permitted regardless of the date the structure was built, if the customer installs high efficiency natural gas appliances as defined by the New Jersey Clean Energy Program. (SJG-W)

RESPONSE: As noted by the commenter, the Board is statutorily required to exempt entities that have obtained a system-wide franchise from the Board in accordance with N.J.A.C. 14:18-14. The intent of the 15-year limit is to prevent “gaming the system.” Without this limit, an applicant could build a new development in an area not designated for growth, then immediately use the exemption to force the utility to pay for an extension of natural gas service. Requiring a 15 year period of occupancy prior to an application for this exemption protects all the ratepayers from misuse of the exemption. Furthermore, while it may be true that propane and oil are less environmentally friendly than natural gas for heating, the rules are designed to further a broader environmental goal – that of preventing ratepayer subsidization of extensions in areas of the State not designated for growth. The Board believes that the rules, including the exemption, strike an appropriate balance between these two environmental objectives.

215. COMMENT: Proposed N.J.A.C. 14:3-8.8(i), as proposed, would appear to prohibit the granting of exemptions to individual customers who might face financial hardships due to circumstances such as a family needing to build a new home to accommodate a family member with disabilities. This should be amended so that it does not rule out exemptions based on financial hardships resulting from exigent circumstances affecting individual customers. (RC)

RESPONSE: In the Board’s experience, financial hardship is complex, difficult to measure and often can be a source of a dispute. Therefore, it should not form the sole basis for a finding of extraordinary hardship. For instance, in the commenter’s example, perhaps the family could remodel their existing home, or move to a handicap-accessible house in a more densely populated area that provides public transit the disabled family member could utilize. If financial hardship is accompanied by other, unique circumstances, the rule provides for the Board to take all of these things into consideration when reviewing an exemption request.

SUBCHAPTER 10. TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

216. COMMENT: We do not object to the readoption of the TRIP regulations at N.J.A.C. 14:3-10, provided the program continues as a pilot program and remains subject to the existing limitations. (RC)

RESPONSE: The readoption did not change the pilot status of the TRIP program or its existing limits.

SUBCHAPTER 12. UTILITY MANAGEMENT AUDITS

217. COMMENT: Proposed N.J.A.C. 14:3-12.2(b) suggests that the Board "may require an audit to be performed by members of its staff or by an independent management consulting firm under the supervision of members of the Board's staff." This provision is not necessary because N.J.A.C. 14:3-12.2(a) is sufficient and adequate. (MBQ)

RESPONSE: N.J.A.C. 14:3-12.2(a) sets forth the Board's basic authority to order an audit, while N.J.A.C. 14:3-12.2(b) describes the possible entities that may perform the audit. Therefore, the Board has retained both provisions upon adoption.

SUBCHAPTER 13. INTEREST ON OVER OR UNDER RECOVERED COST BALANCES UNDER ADJUSTMENT CLAUSES

218. COMMENT: The Electric Discount and Energy Competition Act (EDECA) provides that "Gas supply procured for basic gas supply service by a gas public utility shall be purchased at prices consistent with market conditions." (emphasis added). New Jersey residential consumers who purchase their natural gas supply from the local utility currently do so at a Periodic Basic Gas Supply (Periodic BGSS) rate, set by each utility through an annual filing. Unlike their residential counterparts, large commercial customers purchase natural gas supply from the local utility at a Monthly BGSS rate, which changes from month to month based on the market price of natural gas and other factors. We urge the Board to require that BGSS be provided to residential consumers on the basis of a monthly-adjusted market-based rate. Energy marketers are unable to defer losses, nor do they have guaranteed revenue streams upon which their cost of funds are based, and most importantly energy marketer prices are not protected by the State. So long as utilities are permitted to remain in the merchant function, market-based competition wherein both the incumbent utility and third party supplier are competing to most efficiently acquire, store, transport and manage the natural gas supply should be the goal. Residential natural gas consumers are provided with monthly-adjusted market-based rates in Ohio and New York. Non-market based pricing causes customers to migrate back and forth between the utility and supplier, depending on which party possesses the price advantage as market prices rise or fall. This results in a constant administrative and regulatory burden for existing suppliers and utilities, resulting in additional costs. Additionally, the unstable conditions cause a disincentive for new suppliers to enter the market and are not conducive to efficient and sustained competition and retail market development. Non-market based pricing does not effectively protect

customers from “sticker shock,” as some claim. Over the last five years, the monthly volatility of heating related weather has been about three times as great as the volatility of wholesale market prices. A more frequently adjusted BGSS rate will transition customers to pricing variations in a less abrupt manner, thus avoiding the potential for large rate shocks associated with infrequent annual pricing changes. Consumers already have many options to control their natural gas charges, including levelized billing and enrolling with a third party supplier under a long-term fixed rate program of up to 60 months. The majority of consumers do not participate in levelized billing, indicating that most customers prefer to pay a fluctuating bill which correctly reflects their actual consumption. Annually-adjusted rates take away a customer’s ability to detect immediate changes in the environment and therefore inhibit consumers’ responses to vital pricing signals. New Jersey has set the ambitious objective of reducing energy use by 20% by 2020 through the Energy Master Plan. These rates do not encourage conservation when it may provide the most societal good, and severely diminish the effectiveness of consumption and conservation programs. By setting a Periodic BGSS rate, captive utility ratepayers shoulder a significant risk that is not borne by the utilities, which are guaranteed cost recovery. For example, residential prices in each New Jersey natural gas utility have been largely unchanged since October 2006. Since BGSS filings must be submitted for Board approval months before they take effect, these rates may have been proposed as far back as August 2006. Since that time, each NYMEX Natural Gas futures contract covering the 2006/2007 BGSS period has settled below the August 1, 2006 trading price (commenter attached a graph illustrating this point). Since each of the utilities already has an existing market based rate for commercial customers, it is possible to make a reasonable estimate of how much less residential customers would have paid had the utility charged a monthly-adjusted BGSS rate. Some residential customers in New Jersey paid over a hundred dollars more for natural gas supply than they could have had the utility supply rate been a monthly-adjusted market-based rate. Utilities should not be permitted to be actively engaged in the commodity market with no risk of loss for failure to perform. Captive utility ratepayers should not be required to take risks that the market is willing to bear. Consumers are able to purchase market-based products and services throughout the economy, even most energy related purchases are made on market-based pricing. Gasoline prices change every few days, as does the price of heating oil and other vital products. Yet no customers are adversely affected. Non-market based pricing forces consumers onto a form of “rate-levelized billing” which may not be reflective of consumers’ preferences, nor in consumers’ best interests. The competitive market should be allowed to function in the most efficient manner possible. Market-based competition has been proven effective throughout the economy at delivering price and product innovation and should be encouraged, not stifled through regulation. (IE/NEM)

RESPONSE: The commenters’ suggested changes are outside the scope of these rules. N.J.A.C. 14:3-13 merely sets forth the interest calculation that the Board applies to adjustment clauses. It does not create or modify the clauses themselves. These clauses are created and modified on a company-by-company basis through Board orders. The changes that the commenter recommends would not make the definitions of Basic Gas Supply Service or the Periodic BGSS pricing clauses (also

called “adjustment clauses”) more accurate. Instead, these changes would shift the Board’s procedure for creating the clauses from individual Board orders to rulemaking, and would completely redesign the adjustment clause mechanisms themselves. Therefore, the suggested change has not been made. A TPS with concerns about these types of policy issues should request a meeting with the Director of the Energy Division to discuss their ideas. A TPS can also file for intervention status in a BGSS proceeding and raise these concerns in that forum.

Agency-Initiated Changes:

- Minor changes are made to N.J.A.C. 14:3-1.3(f)2 and (f)4 for emphasis and clarity.
- The URL for the Board’s website is updated at N.J.A.C. 14:3-4.7 and 6.1.
- A cross reference to procedures for disputing charges is added at N.J.A.C. 14:3-3A.4(h).
- Minor clarifying changes that do not affect meaning are added to N.J.A.C. 14:3-3A.8, and in addition a clarification is added to indicate that the ten day period will start upon the postmark date of the discontinuance notice.
- A typographical error in a cross reference was corrected in N.J.A.C. 14:3-4.6(c)2iv.
- Minor clarifying changes that do not affect meaning are made to N.J.A.C. 14:3-7.6 and 8.2.
- In N.J.A.C. 14:3-10.7(e)6i, brackets surrounding a mathematical equation are replaced with parentheses, in order to avoid confusion stemming from the conventional use of brackets to indicate deletions in rulemaking.
- A cross reference is corrected in N.J.A.C. 14:5-8.3(c), located in the Board's Electric service rules, which addresses reporting of interruptions. The cross reference was to N.J.A.C. 14:3-3.9, but that provision was relocated and rephrased as part of the instant rulemaking, and is now found at N.J.A.C. 14:3-3.7. Therefore, N.J.A.C. 14:5-8.3(c) is being revised to reflect this relocation.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. The rule proposed for readoption are not promulgated under the authority of, or in order to implement, comply with or participate in any program established under Federal law or under a State statute that incorporate or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis for the proposed readoption of these subchapters.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 14:3.

Full text of the adopted amendments follows (additions indicated in boldface with asterisks *thus*; deletions indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

14:3-1.2 Applicability and scope

(a) - (c) (No change from proposal.)

(d) If a dispute arises between a utility and any other person regarding this chapter, an informal complaint may be submitted to the Board in accordance with N.J.A.C. 14:1-5.13*, or a petition may be filed under N.J.A.C. 14:1-5*.

14:3-1.3 Tariffs

(a) Each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the Board for approval*, with an electronic copy to Rate Counsel*. The tariff filing shall meet the applicable requirements for pleadings at N.J.A.C. 14:1-4, the applicable requirements for petitions at N.J.A.C. 14:1-5.1 through 5.5, and the applicable requirements for tariff filings at N.J.A.C. 14:1-5.11, 5.12, and/or 5.12A.

(b) - (c) (No change from proposal.)

(d) Each utility shall operate in accordance with its tariff at all times, unless specifically authorized in writing by *the* Board *[staff]* to do otherwise.

(e) If a utility *[enters]* *plans to enter* into a contract or agreement with a particular customer or group of customers, for service at rates different from those *[provided in]* *authorized under* the utility's Board-approved tariff, the utility shall file *a petition for approval, which shall include* four copies of the contract or agreement, at least thirty days prior to the effective date of the agreement or contract.

(f) Each *[off-tariff rate agreement]* filing *requesting Board approval* under (e) above shall be accompanied by a detailed statement that includes:

1. (No change from proposal.)
2. A detailed list of the costs *and expenses* to the utility that will result from its performance under the contract or agreement;
3. (No change from proposal.)
4. The effect of the contract or agreement on the utility's *revenues and* income*, in detail*;
5. (No change from proposal.)
6. A complete and detailed list of every way in which the contract or agreement *[changes or affects]* *differs from* the utility's Board-approved tariff.

(g) (No change from proposal.)

(h) Each utility shall make its Board-approved tariff available for public inspection in each utility office where applications for service may be made*, and on its website, if the utility has a website*.

(i) (No change from proposal.)

***[14:3-1.4 Format for submittals**

Each utility shall provide all notices, filings, information and reports required under this chapter in the format provided by Board staff and/or posted on the Board's website at www.bpu.state.nj.us, unless otherwise specifically stated in this chapter. If a utility wishes to submit any notice, information or report required under this chapter in a format other than that provided by Board staff, the utility may request a waiver of the format requirements by submitting a written explanation demonstrating that the required format is infeasible for the utility, based on unique or unusual circumstances that do not affect other utilities.]*

SUBCHAPTER 2. PLANT

14:3-2.1 Plant construction

(a) (No change from proposal.)

(b) Each utility shall *make reasonable efforts to* protect its property from injury, vandalism or damage of any kind, and shall exercise due care to reduce hazards to which employees, customers, and the general public may be subjected by the utility's equipment and facilities.

(c) (No change from proposal.)

(d) When an extension, as defined at N.J.A.C. 14:3-8.2, is constructed underground, the responsibility for construction of the portion of the extension located on the property to be served shall be as follows:

1. (No change from proposal.)
2. For an extension of water or wastewater treatment service, the applicant for the extension shall construct the entire extension, except for the water meter and any of the following that are located on the *roadside utility* right-of-way of the property:
 - i. - ii. (No change from proposal.)
 - iii. Any piping, branches or other infrastructure that will serve properties other than the property of the applicant for an extension*, either at the time of application or in the foreseeable future*;

3. - 4. (No change from proposal.)

(e) (No change from proposal.)

(f) Once an underground extension has been constructed, the ownership and maintenance of the portion of the extension that is located on the property to be served shall be as follows:

1. (No change from proposal.)
2. For an extension of water or wastewater treatment service, as defined at N.J.A.C. 14:9-1.2, the applicant for the extension shall own and maintain the entire extension*. The* , except that the* utility shall own and maintain *(the)* *;
 - i. The* water meter *[and any]* *;
 - ii. Any portion of the extension that was installed prior to {effective date of this rule} and which is owned and maintained by the utility as of {effective date of this rule}; and
 - iii. Any* of the following that are located on the *roadside utility* right-of-way of the property:
 - *[i.]* *(A)* The shutoff valve;
 - *[ii.]* *(B)* A fire hydrant*, if the municipality agrees to add the hydrant to its inventory of public fire hydrants. If the municipality does not agree, the applicant remains the owner of the hydrant, responsible for paying the Board-approved tariff rates for private fire protection service to the utility*;
 - *[iii.]* *(C)* Any piping, branches or other infrastructure that will serve structures or properties other than those of the applicant for an extension*, either at the time of application or in the foreseeable future*;
3. For an extension of telecommunications service, the utility shall own and maintain the extension up to the demarcation point; *and*
4. For an extension of electric service to a one, two, or three family residence, the utility shall own and maintain the extension*[*]; and
5. For an extension of electric service to a structure not covered at (f)4 above, the extension shall be owned and maintained by the applicant for the extension or the property owner, unless the utility and the applicant or property owner make another agreement in writing. The utility shall maintain any such agreement and shall provide the record to Board staff upon request.]*

14:3-2.5 Identification of utility equipment

(a) Each utility shall mark each piece of equipment that it owns, solely or jointly, which is *installed after {effective date of this rule} and is* not permanently located at a utility office, maintenance yard, storage facility or similar installation*[*]. The]* , as follows:

1. The* utility shall mark the equipment with the initials of its name, abbreviation of its name, corporate symbol or other distinguishing mark or code by which ownership may be readily and definitely ascertained*[*], and]** .*
2. The utility shall mark the equipment* with a number or symbol or both by which the location of each piece of equipment may be determined on utility office records*[*.]* .*

Note: This is a courtesy copy of the adoption. The official version will be published in the New Jersey Register on May 19, 2008. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

3. The equipment subject to this subsection shall include but shall not be limited to all poles or structures supporting wires or cables, fire hydrants, aboveground or underground pipes, and other similar equipment .*[.]* *.*
4. Such markings may be made with paint, brand or with a soft metal plate *[.]* *.* and*
5. (No change from proposal.)

[b)] *(c)* In compliance with 49 C.F.R. §192.707 by a gas utility constitutes compliance with the marking requirements of this section.*

[b)] *(c)* In the case of two or more utilities jointly owning any structures or equipment, the distinguishing mark or number of each utility shall be placed on such structures and equipment, but not necessarily more than one number shall be placed thereon. The numbering may be in accordance with a code which will indicate joint ownership.

[c) In the case of structures carrying or supporting overhead trolley wires, where there is a double line of such structures, one on each side of the track, such mark need be affixed to but one line of such structures.]

(d) - (g) (No change from proposal.)

(h) In the case of structures carrying or supporting overhead trolley wires, where there is a double line of such structures, one on each side of the track, such mark need be affixed to but one line of such structures.

SUBCHAPTER 3. SERVICE

14:3-3.1 Duty to furnish service

(a) It shall be the duty of every utility to furnish safe, adequate and proper service, including furnishing and performance of service in a *non-discriminatory* manner*, and in a manner* that tends to conserve energy resources and preserve the quality of the environment.

(b) (No change from proposal.)

14:3-3.2 Customer applications for service

(a) - (d) (No change from proposal.)

(e) If a utility requires proof of identity with an application for service, the utility shall accept any of the following items to establish identity, and may also accept other documents at the utility's discretion:

1. A valid driver's license;

Note: This is a courtesy copy of the adoption. The official version will be published in the New Jersey Register on May 19, 2008. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

2. A birth certificate;
3. A valid U.S. passport;
4. A U.S. residency card with photograph; *[or]*
5. A U.S. military identification card*;
6. A county identification card;
7. A county welfare identification card; or
8. A student identification card*.

(f) - (h) (No change from proposal.)

14:3-3.4 Deposits for service

(a) (a) - (c) (No change from proposal.)

(d) A utility may require *[a]* *an existing* customer to furnish a deposit or increase their existing deposit if the customer fails to pay a bill within fifteen days after the due date printed on the bill. The deposit required shall be in an amount sufficient to secure the payment of future bills.

(e) - (f) (No change from proposal.)

(g) If a utility *[routinely]* requires a deposit or requires that customers establish a credit record, the utility shall apply the same credit and deposit requirements throughout the utility service area*, and, if the utility maintains a website, the utility shall post these requirements on that website*. A utility shall not set different credit or deposit requirements for different municipalities or locations.

(h) When a utility requires a customer deposit for service, the utility shall inform the customer of the interest rate that *[the utility shall pay on]* *applies to* the deposit *at the time the deposit is established*, determined in accordance with N.J.A.C. 14:3.5.

(i) The utility shall furnish a receipt to each customer that makes a deposit. *If the deposit is provided by mail, internet or telephone, the utility may comply with this requirement by displaying the amount of the deposit on the customer's next bill*.

(j) (No change from proposal.)

14:3-3.5 Return of deposits, interest on deposits

(a) Each utility shall review a residential customer's account at least once every year and a nonresidential customer's account at least once every two years. If this review indicates that the customer has *[established]* *met the utility's standard requirements for establishing* credit *[satisfactory to the utility]*, the utility shall refund the customer's deposit.

(b) Upon closing an account, a utility shall refund to the customer the balance of any deposit remaining after the closing bill for service has been settled*, including any interest required under this chapter*.

(c) If the utility refunds a deposit in cash, the utility *[may require the customer to surrender]* *shall accept either* the receipt for the deposit, or *[may require]* proof of *the customer's* identity *, as proof of entitlement to the deposit*.

(d) A utility shall pay the customer simple interest on any deposit *established under this chapter* at a rate equal to the average yields on new six month Treasury Bills for the twelve-month period ending each September 30. Said rate shall become effective on January 1 of the year following the twelve-month period.

(e) - (h) (No change from proposal.)

14:3-3.6 Access to customer's premises

(a) The utility shall have the right of reasonable access to customer's premises, and to all property *on the customer's premises which is* furnished by the utility, at all reasonable times for the purpose of inspection of customer's premises incident to the rendering of service*[, collection of coin boxes,]* *including* reading meters*[, or]* *.* inspecting, testing, or repairing its facilities used in connection with supplying the service*[,]* *.* or *[for]* the removal of its property.

(b) The customer shall obtain, or cause to be obtained at the customer's cost, all permits needed by the utility for access to *any of* the utility's facilities *that are located on the customer's premises* *[, such as municipal permits to work on utility facilities that run under public streets]*.

(c) (No change from proposal.)

14:3-3.7 Interruptions of service

(a) Each utility shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies (hereinafter referred to as interruptions) of service and, when such interruptions occur, service shall be restored as promptly as possible consistent with safe practice. *Utilities shall make reasonable efforts to be aware of all service interruptions and to comply with all reporting deadlines in this section. If a utility fails to meet the deadlines in this section, the burden of proof shall be upon the utility to show good cause for the failure.*

(b) This section applies to service interruptions for any reason, including but not limited to an act of God, weather condition, natural disaster, attack, catastrophic occurrence, accident, strike, legal process, or governmental interference. However, this section shall not apply to service interruptions made in accordance with provisions in interruptible service contracts between the utility and its customers.

(c) Telecommunications utilities shall not be subject to (d) through (f) below, but shall instead comply with the service interruption provisions in the Board's telephone rules at N.J.A.C. 14:10-1A.14.

(d) *[Except for telecommunications utilities, if]* Thirty-minute interruptions: If a service interruption meets one or more of the criteria at 1 through 4 below, the utility shall report the interruption to the Board no later than thirty minutes from the time that the utility becomes aware that service has been interrupted for thirty minutes. This subsection shall apply if service is interrupted for thirty minutes to one or more of the following:

1. A group of ten thousand or more customers;
2. A hospital, as defined at N.J.A.C 8:43G-1.2;
3. An airport that is designated as a class I, II, or IV airport under 14 C.F.R. Part 139, and that holds Airport Operating Certification from the Federal Aviation Administration under 14 C.F.R. Part 139; and/or
4. *[A major transportation facility, or location that supplies power to such a facility, including but not limited to railroad, autobus and subway facilities such as Newark Pennsylvania Station, Secaucus Junction, Hoboken Station and Trenton Train Station]* An autobus station or subway system, or a passenger rail system.*

(e) Two-hour interruptions: In addition to the reporting required at *[(c)]* (d) above, if a service interruption meets one or more of the following criteria, the utility shall report the interruption to the Board no later than 30 minutes from the time that the utility becomes aware that service has been interrupted for two hours:

1. The service interruption causes the closure of one or more lanes of an interstate highway, State highway, the New Jersey Turnpike, the Atlantic City Expressway or the Garden State Parkway;
2. Service is interrupted for two hours or more to any of the *[critical]* customers listed in (f) below;
3. Gas service is interrupted for two hours or more to 100 customers or more; and/or
4. Service is interrupted for two hours or more to a sufficient number of non-gas customers to meet the applicable threshold in Table A below:

Table A

Threshold For Reporting A Non-Gas Service Interruption

Number of Customers The Utility Serves	Threshold: Number of Customers Interrupted For 2 Hours Or More
500 or fewer	20
501 to 1,000	50
1,001 to 10,000	100
10,001 to 100,000	200
100,001 to 500,000	1,000
500,001 to 1,000,000	2,000
1,000,001 or more	5,000

(f) The following are **[critical]* the* customers subject to (e)2 above:

1. A school facility, including a regionally accredited college or university, a public or non-public school, a facility that provides vocational-technical education, or a facility subject to the jurisdiction of a district board of education, as defined in N.J.A.C. 6A:9-2.1; **and**
2. A State correctional facility designated to house inmates serving prison sentences*]; and
3. A large public institution, apartment complex, major commercial customer or large industrial customer, for which the interruption of service would significantly affect commerce or community functioning]*.

(g) The utility shall promptly follow up the reporting required in **[(c) and/or]* (d) and/or (e)** above with a detailed written report that includes all pertinent facts, including the cause of the interruption, the number and locations of customers affected, the duration of the interruption, utility actions to correct the interruption and to minimize and/or remedy its effects.

(h) Planned interruptions for operating reasons shall always be preceded by reasonable notice to all affected customers, and the work shall be planned so as to minimize customer inconvenience.

(i) Whenever the New Jersey Department of Transportation serves a public utility with a notice prohibiting street openings pursuant to N.J.S.A. 27:7-26, or the utility receives an **New Jersey** Executive Department directive, or is otherwise put upon notice of any facts, actual or threatened, which may adversely affect its ability to render safe, adequate and proper service, the public utility shall forthwith report the pertinent facts to the Board, in writing.

(j) A utility shall perform all reporting required under this section using the forms and procedures prescribed by Board staff, which shall be posted on the Board's website at <http://www.state.nj.us/bpu/divisions/reliability>.

(k) - (l) (No change from proposal.)

14:3-3.8 Service call scheduling

(a) When a service call is scheduled for a residential customer, and the customer's presence is necessary for the service call, the utility shall inform the customer upon that it may request of either a specified time or, at a maximum, a four-hour time block during normal business hours, during which the service call will occur. The utility may also schedule service calls outside of normal business these hours for the convenience of the customer.

(b) - (d) (No change from proposal.)

SUBCHAPTER 3A. Discontinuance and restoration of service

14:3-3A.1 Basis of discontinuance of service

(a) The utility shall have the right to suspend or curtail or discontinue service for any of the following reasons:

1. - 3. (No change from proposal.)

4. For nonpayment of a deposit, in accordance with N.J.A.C. 14:3-3A.9; or

[4.] *5.* For any of the following acts or omissions on the part of the customer:

i. - v. (No change from proposal.)

[vi. Failure to make or increase an advance payment or deposit as provided for in these rules or the utility's tariff;]

[vii.] *vi.* Refusal to contract for service where such contract is required;

[viii.] *vii.* Connecting and operating in such manner as to produce disturbing effects on the service of the utility or other customers;

[ix.] *viii.* Failure of the customer to comply with any reasonable standard terms and conditions contained in the utility's tariff;

[x.] *ix.* Where the condition of the customer's installation presents a hazard to life or property; or

[xi.] *x.* Failure of customer to repair any faulty facility of the customer.

(b) (No change from proposal.)

(c) Public utilities shall not discontinue residential service involuntarily except between the hours of 8:00 A.M. and 4:00 P.M. Monday through Thursday, unless there is a safety related emergency. There shall be no involuntary discontinuance of service on Fridays, Saturdays, and Sundays or on the day before a New Jersey State holiday or on a New Jersey State holiday absent such emergency.

(d) - (e) (No change from proposal.)

14:3-3A.2 Discontinuance for nonpayment

(a) Except for residential telephone service that is covered at N.J.A.C. 14:3-3A.8, and subject to the limits below in this section, a public utility may discontinue service for nonpayment only if one or both of the following criteria are met^{*}, and shall not discontinue service for nonpayment for any other reason^{*}:

1. - 2. (No change from proposal.)

^{*}[(b) A utility shall not discontinue service for nonpayment for any reason other than those listed at (a)1 and 2 above.]^{*}

^{*}(b)^{*} A utility may discontinue service for nonpayment only of charges for the actual utility commodity itself, that is, for electricity, gas, water, wastewater service, or telephone service. A utility shall not discontinue service for nonpayment of charges for optional services, as defined at N.J.A.C. 14:4-1.1, or for repairs, merchandise, installation of conservation measures, or other non-tariff services contracted for between the customer and the utility, nor shall the utility threaten discontinuance for any of these reasons.

(c) - (d) (No change from proposal.)

(e) A utility shall not discontinue a customer's service for nonpayment under the following circumstances:

1. - 4. (No change from proposal.)

5. A utility shall not discontinue service because of nonpayment in cases where a charge is in dispute, provided the undisputed charges are paid and the customer ^{*}[requests]^{*} ^{*}has requested^{*} that the Board investigate the disputed charge, in accordance with N.J.A.C. 14:3-7.6^{*}[(a)]^{*} ^{*}(b)^{*}. ^{*}[In such a case the utility shall notify the customer that unless steps are taken within five days after the customer requested a Board investigation to invoke formal or informal Board action within five days, service will be discontinued for nonpayment.]^{*}

(f) - (j) (No change from proposal.)

14:3-3A.3 Notice of discontinuance for nonpayment

(a) (No change from proposal.)

(b) The notice of discontinuance ^{*}[for nonpayment shall not be]^{*} sent to the customer ^{*}[until]^{*} ^{*}shall be postmarked no earlier than^{*} fifteen days after the postmark date of the outstanding bill, except for a water utility customer with fire protection or multi-use

service under N.J.A.C. 14:3-3A.4(j) below. In the absence of a postmark, the burden of proving the date of mailing shall be upon the utility.

(c) The notice of discontinuance for nonpayment shall provide the customer with at least ten days written notice of the utility's intention to discontinue service. *The ten days shall begin on the postmark date of the notice.* This written notice shall be sent by first class mail, apart from the bill and as a separate mailing. However, should a utility find that compliance with this rule would result in financial harm and/or would negatively impact the utility's daily operations, the utility may file a written request for exemption with the Secretary of the Board, setting forth the basis for such request.

(d) - (g) (No change from proposal.)

14:3-3A.4 Additional notice requirements for discontinuance of residential and special customers

(a) - (g) (No change from proposal.)

(h) On all notices of discontinuance to residential electric and gas customers there shall be included, in addition to the other information required under this subchapter, all of the following:

1. A statement that the customer may *dispute a charge in accordance with N.J.A.C. 14:3-7.6, and may* contact the Board of Public Utilities to request assistance in the resolution of a bona fide disputed charge and further, that a customer may also request a formal hearing concerning such disputed charge;
2. - 3. (No change from proposal.)

(i) - (j) (No change from proposal.)

14:3- 3A.8 Discontinuance of a residential customer's telephone service

(a) (No change from proposal.)

(b) A telephone utility shall comply with all requirements for discontinuance of service in this *section, in addition to the other requirements in this* subchapter.

(c) When a residential customer's BRLTS charges exceed \$30.00, a telephone utility may*, in accordance with N.J.A.C. 14:3-3A.3(c),* disconnect the service no sooner than 10 days after *the postmark date of the* written notice *of discontinuance provided* to the customer *[of the utility's intention to disconnect such service]* *under N.J.A.C. 14:3-3A.3(b). Such notice shall include a statement that informs customers of their ability to make a partial payment on the bill and that any partial payment made by the customer would be allocated according to (h) below.

(d) A telephone utility may terminate BRLTS only for nonpayment of basic *residential* local telephone service charges, in accordance with N.J.A.C. 14:3-3A.2(b).

(e) When a residential customer's charges for nonbasic telephone services are more than \$20.00 in arrears, a telephone utility may deny or block those services, at no additional charge to the residential customer, subject to the notice requirements in *[this section]* *(c) above*. Customers who select the residential credit limit option in (f) below shall not be blocked until such time as their limit is met.

(f) - (i) (No change from proposal.)

SUBCHAPTER 4. METERS

14:3-4.1 Ownership of meters and equipment

(a) For each customer that is supplied utility service, other than telephone service, on a measured basis, the utility shall provide a meter, and such other equipment and service appliances as *[are necessary to provide service to the customer]* are specified in the utility's Board-approved tariff*.

(b) The determination of whether the customer or the utility bears the cost of *purchase and installation of* meters, equipment and service appliances provided by the utility under (a) above shall be governed by the Board's main extension rules at N.J.A.C. 14:3-8 *and the utility's Board-approved tariff*.

(c) (No change from proposal.)

14:3-4.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions that apply to this subchapter can be found at N.J.A.C. 14:3-1.1.

"Bell prover" means a device that measures the volume of a gas using a calibrated bell placed in a bath of oil or water.

"Meter testing equipment" means equipment and facilities used to test the accuracy of meters that measure a utility customer's utility usage. This term includes equipment and facilities used to test customer meters directly, as well as equipment and facilities used to test equipment that is then used to test customer meters.

"NJ Weights and Measures" means the Office of Weights and Measures in the Division of Consumer Affairs in the New Jersey Department of Law and Public Safety.

Portable meter testing equipment means meter testing equipment that is designed to, and can be, moved from location to location without the need to be calibrated to ensure accuracy each time it is moved.*

14:3-4.4 Testing of utility meter testing equipment

(a) A utility shall ensure that its meter testing equipment is tested and *either* sealed *or certified* in accordance with this section at each of the following events or time intervals:

1. Each time the equipment is moved*, except if the equipment is portable meter testing equipment*;
2. - 4. (No change from proposal.)

(b) *[The certification required by this section shall be performed]* *To comply with this section, a utility shall do either of the following:

1. Have its meter testing equipment tested and sealed* by Weights and Measures*, unless both of the following requirements are met:]* or
2. *[The certification is performed]* *Meet both of the following requirements:*
 - i. *[1.]* *Have its meter testing equipment tested and certified* by a laboratory approved and recognized by the National Institute of Standards and Technology (NIST) with testing equipment traceable to NIST; and
 - ii. *[2.]* Prior to utilizing the equipment for compliance with this subchapter, *[the utility has submitted]* *submit* to the Board a written approval, issued by the Superintendent of NJ Weights and Measures, accepting the laboratory that performed the certification for purposes of compliance with this subchapter.

(c) - (d) (No change from proposal.)

14:3-4.6 Adjustment of charges for meter error

(a) Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

(b) If the date when the meter first became inaccurate is known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was in error at the time of the test, adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;
2. Determine the total charges for metered service that accrued during the entire period that the meter was in error; and
3. The amount of the adjustment shall be the percentage determined under (b)1 above, applied to the charges determined under (b)2 above.

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. (No change from proposal.)
2. Determine the applicable time period as follows:
 - i. - iii. (No change from proposal.)
 - iv. If the time determined under [(c)2iii] [(c)2ii] above is shorter than the time the meter has served the existing customer, the applicable time period is the time determined under (c)2ii above;
3. - 4. (No change from proposal.)

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

1. The meter was tampered with*, or other theft of the utility service has been proven:*
2. - 3. (No change from proposal.)

(e) (No change from proposal.)

(f) In cases of a charge to a customer's account under (d)2 or 3 above, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was [(overcharged)] [(undercharged)].

14:3-4.7 Meter test reports and records

(a) Each utility shall provide the Board with summaries of all meter tests. Each utility having 500 or more meters shall report quarterly. Utilities having less than 500 meters shall report annually. Blank forms on which reports are to be made will be furnished by the Board on its website at [(www.bpu.state.nj.us)] [(http://nj.gov/bpu/)].

(b) - (d) (No change from proposal.)

SUBCHAPTER 6. RECORDS AND REPORTING

14:3-6.1 General provisions for records and reporting

(a) - (c) (No change from proposal.)

(d) In accordance with N.J.A.C. 14:3-1.4, all reports and records required under this subchapter shall be provided in the format provided by Board staff or posted on the Board's website at [(www.bpu.state.nj.us)] [(http://nj.gov/bpu/)], unless otherwise specifically stated in this chapter, or unless format requirements are waived in accordance with N.J.A.C. 14:3-1.4.

14:3-6.7 Reporting suspicious acts

(a) Each public utility shall report to the Board within six hours of becoming aware of the occurrence of any of the following incidents:

1. - 3. (No change from proposal.)
4. Extensive note-taking, or audio recording, regarding any utility facility; *and*
5. Intentional damage to any utility facilities or equipment. This does not include vehicle accidents, automobile collisions with utility poles, damage to underground facilities by an excavator or other third party which is reported in accordance with other Board rules, or routine vandalism such as graffiti or vandalism to utility vehicles*]; and
6. Any other incident that has a potential nexus to terrorism]*.

(b) (No change from proposal.)

SUBCHAPTER 7. BILLS AND PAYMENTS FOR SERVICE

14:3-7.1 Billing general provisions

(a) - (e) (No change from proposal.)

(f) Each utility shall ensure that every bill it issues includes the following text, legibly printed in an obvious location: "This utility *[is]* *provides services* regulated by the New Jersey Board of Public Utilities, which can be reached at 800-624-0241 and 973-648-2350." This text shall be printed in type no less than one-half inch in height (36 points).

14:3-7.2 Form of bill for metered service

(a) - (c) (No change from proposal.)

*[(d) If for any reason a utility cannot read a customer's meter, the meter reader shall leave a written notice in a conspicuous location near an entrance to the building. The notice shall:

1. Advise the customer that the customer may telephone the meter reading to the utility, and provide the appropriate telephone number; and
2. Shall include a prepaid business reply card that enables the customer to mark the meter reading and send it to the utility.]* *Reserved*

(e) (No change from proposal.)

(f) Prior to the implementation of any plan, automated or otherwise, which would replace or modify a utility's current method of taking actual meter readings for any class of customers, said plan shall be submitted to the Board for approval. *[If the plan provides that the utility is not required to utilize a human to read meter indices for billing purposes, the]* *The* plan shall be accompanied by all of the following:

1. - 4. (No change from proposal.)

14:3-7.5 Budget billing plans for residential accounts

(a) (No change from proposal.)

(b) Each gas, electric, water and wastewater utility which does not bill on a flat rate basis shall file with the Board as part of its tariff, and have available to the public on request^{*}, a budget billing plan program description for residential accounts. The budget billing plan program shall allow a customer to pay a predetermined monthly rate for a set time period (known as the budget plan year), based on the customer's average usage. At the end of the budget plan year, the public utility shall "true up" the customer's account , in accordance with (g) below, and will adjust the customer's charges to reflect the actual usage over the budget plan year.

(c) The budget billing plan required by this section shall be optional, except ^{*}[for] the utility shall ensure that residential electric or gas customers who apply for and are eligible for the Winter Termination Program under N.J.A.C. 14:3-3A.5 participate in a budget billing plan.

(d) (No change from proposal.)

(e) The utility shall ^{*}[have the authority to determine whether the] offer all customers the same budget plan year ^{*}[lasts] , which will last 10, 11 or 12 months, except that the ^{*}[time frame] budget plan year for all residential electric or gas customers who seek the protection of the Winter Termination Program shall be twelve months. ^{*}[Any change in time frame will require prior approval by the Board of Public Utilities.]^{*}

(f) (No change from proposal.)

(g) ^{*}[The] For each customer on a budget billing plan, the utility shall "true up," or compare the actual cost of service rendered, as determined by actual meter readings, and the monthly budget amount as follows:

1. The comparison shall be made at the beginning of the budget plan year, and at least once ^{*}[in] during the budget plan year;
2. The comparison shall take into account the customer's usage and any rate increases or decreases that have been granted by the Board, including increases or decreases in the levelized energy or levelized gas adjustment charges;
3. If ^{*}[and when] a comparison performed during a customer's budget plan year reveals an increase or decrease of 25 percent or more in the monthly budget amount, the monthly budget amount shall be adjusted ^{*}[upwards or downwards, as the case may be,] for the balance of the budget plan year to minimize the adjustment required at the end of the budget plan year ^{*}[between the monthly budget amount and the actual cost of service rendered during the budget plan

year]*. There shall be no more than one such adjustment during the budget plan year;

4. - 5. (No change from proposal.)

(h) - (j) (No change from proposal.)

(k) Any change in a utility's budget billing plan program, including a change in the time frame for its budget plan year, shall be filed and approved by the Board through a tariff amendment prior to its implementation.

14:3-7.6 Disputes as to bills

(a) (No change from proposal.)

(b) If the utility and the customer do not resolve the dispute, the utility shall notify the customer *[in writing]* that:

1. (No change from proposal.)
2. The request for investigation shall be made within five *business* days after the customer contacts the utility to dispute the charges; and
3. (No change from proposal.)

(c) Once a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease *until Board staff notify the utility and the customer that the dispute has been resolved in accordance with (e) below*.

(d) Each utility shall provide the Board's Division of Customer Assistance with responses to written complaints within five days *of receipt of the complaint,* and within three days *[for] *of receipt of* verbal complaints.

(e) When *[the]* Board *[has]* *staff have* determined that a formal or informal dispute has been resolved, *Board staff shall notify* the utility *. If the resolution of the dispute results in discontinuance of the customer's service, the utility* shall provide notice to the customer in accordance with N.J.A.C. 14:3-3A.3 before service may be discontinued.

(f) In appropriate cases the Board may require *that the customer place* all or a portion of disputed charges *[to be placed]* in escrow *pending the resolution of the dispute*.

(g) (No change from proposal.)

14:3-7.7 Deferred payment agreements

(a) Whenever a residential customer advises the utility that the customer wishes to discuss a deferred payment agreement because said customer is presently unable to pay a total outstanding bill *and/or deposit*, the utility shall make a good faith effort to provide the customer with an opportunity to enter into a fair and reasonable deferred

payment agreement(s) which takes into consideration the customer's financial circumstances.

(b) - (f) (No change from proposal.)

SUBCHAPTER 8. EXTENSIONS TO PROVIDE REGULATED SERVICES

14:3-8.2 Definitions

In addition to the definitions at N.J.A.C. 14:4-1.2 and N.J.A.C. 14:3-1.1, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Applicable tariff" means the tariff, filed with and approved by the Board, that covers the geographic area in which a particular development or extension is located.

"Applicant for an extension" means a person that has applied to the appropriate regulated entity, as defined at N.J.A.C. 14:3-1, for the construction of an extension as defined at N.J.A.C. 14:3-8.2.

"Area not designated for growth" means an area that is not a designated growth area as defined herein.

"Cost" means, with respect to the cost of construction of an extension, actual and/or site-specific unitized expenses incurred for materials and labor (including both internal and external labor) employed in the design, purchase, construction, and/or installation of the extension, including overhead directly attributable to the work, as well as overrides or loading factors such as those for back-up personnel for mapping, records, clerical, supervision or general office functions.

"Center designation" or "designated center" means a center that has been officially recognized as such by the State Planning Commission in accordance with its rules at N.J.A.C. 5:85 or in the Pinelands Area, a center recognized as such pursuant to a valid Memorandum of Agreement between the New Jersey Pinelands Commission and the New Jersey State Planning Commission.

"Designated growth area" means an area depicted on the New Jersey State Planning Commission State Plan Policy Map as:

1. Planning Area 1 (Metropolitan Planning Area, or PA-1);
2. Planning Area 2 (Suburban Planning Area, or PA-2);
3. A designated center;
4. An area identified for growth as a result of a petition for municipal plan endorsement that has been approved by the State Planning Commission pursuant to N.J.A.C. 5:85-7;

5. A smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (l) of section 6 of N.J.S.A. 13:17-6; or
6. A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town, as designated in the Comprehensive Management Plan prepared and adopted by the Pinelands Commission pursuant to section 7 of the Pinelands Protection Act, N.J.S.A. 13:18A-8.

Assistance in determining whether a particular parcel of land in a designated growth area can be obtained through the Smart Growth Locator web site at <http://sgl.state.nj.us>, and from the Department of Community Affairs Office of Smart Growth website at <http://www.nj.gov/dca/osg/>.

"Distribution revenue" means the total revenue, plus related Sales and Use Tax, collected by a regulated entity from a customer, minus the following, as applicable:

1. For a gas public utility, as defined at N.J.A.C. 14:4-2.2, Basic Gas Supply Service charges, plus related Sales and Use Tax on the Basic Gas Supply Service charges, assessed in accordance with the gas public utility's tariff; and
2. For an electric public utility as defined at N.J.A.C. 14:4-1.2, Basic Generation Service charges, plus Sales and Use Tax on the Basic Generation Service charges, and, unless included with Basic Generation Service Charges, transmission charges derived from FERC approved Transmission Charges, plus Sales and Use Tax on the transmission charges, charges assessed in accordance with the electric public utility's tariff.

"Extension" means the construction or installation of plant and/or facilities to convey new service from existing or new plant and/or facilities to one or more applicants for an extension, to a structure that was built, or rebuilt after an existing structure was demolished, and occupied after March 20, 2005. This term also means the plant and/or facilities themselves. The provision of *[sewer and]* water *and wastewater treatment* service by a regulated entity shall be considered an extension regardless of the date of construction and occupancy of the structure to be served. This term includes all plant and/or facilities for transmission and/or distribution, whether located overhead or underground, on a public street or right of way, or on a private property or private right of way, including the wire, poles or supports, cable, pipe, conduit or other means of conveying service from existing plant and/or facilities to each unit or structure to be served, except as excluded at 1 through 6 below. An extension begins at the existing infrastructure and ends as follows:

1. For water service and for wastewater treatment service, the extension ends at the curb of the property or properties on which the customers to be served are located, but also includes the meter, if any, as well as any of the following that are located on the property's roadside *utility* right-of-way:
 - i. Fire hydrants;
 - ii. Branches; or
 - iii. Other water infrastructure serving others besides the applicant;
2. For gas service, the extension ends at the meter and includes the meter;

Note: This is a courtesy copy of the adoption. The official version will be published in the New Jersey Register on May 19, 2008. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

3. For an overhead extension of electric service, the extension ends at the point where the service connects to the building, but also includes the meter;
4. For an underground extension of electric service, the extension ends at, and includes, the meter; and
5. For telecommunications service, the extension ends at the point of demarcation as defined in the regulated entity's tariff.

"Generation" means the manufacture, production, extraction or creation of a substance (such as water or petroleum products), a form of energy (such as electricity), or a signal (such as a telecommunications signal).

"New Jersey State Planning Commission" means the commission established by the State Planning Act, N.J.S.A. 52:18A-196 et seq.

"Office of Smart Growth" means the Office in the Department of Community Affairs that staffs the State Planning Commission and provides planning and technical assistance as requested. The Office of Smart Growth serves the same functions as the Office of State Planning, described at N.J.S.A. 52:18A-201.

"Planning area" has the meaning assigned to the term in the rules of the State Planning Commission at N.J.A.C. 5:85-1.4. As of December 20, 2004, this term is defined in those rules to mean an area of greater than one square mile that shares a common set of conditions, such as population density, infrastructure systems, level of development, or environmental sensitivity. The State Development and Redevelopment Plan sets forth planning policies that serve as the framework to guide growth in the context of those conditions.

"Plant and/or facilities" means any machinery, apparatus, or equipment, including but not limited to mains, pipes, aqueducts, canals, wires, cables, fibers, substations, poles or other supports, generators, engines, transformers, burners, pumps, and switches, used for generation, transmission, or distribution of water, energy, telecommunications or other service that a regulated entity provides. This term includes service lines and meters, but does not include equipment used solely for administrative purposes, such as office equipment used for administering a billing system.

14:3-8.5 General provisions regarding costs of extensions

(a) (No change.)

(b) *[An] *Except for certain underground extensions covered by N.J.A.C. 14:3-2.1(f), an* extension shall become the property of the regulated entity upon its completion. If an extension is paid for by an applicant in accordance with this chapter, a regulated entity shall include the extension in its contribution in aid of construction (CIAC) accounts, for accounting purposes only. The regulated entity shall record such a contribution in a manner consistent with the Uniform System of Accounts, 18 CFR Part 101, which is incorporated by reference in the rules. Amounts that a regulated entity

receives in accordance with this subchapter and which are not refunded to an applicant shall be credited to the appropriate plant account or accounts.

(c) - (n) (No change from proposal.)

SUBCHAPTER 10. TARGETED REVITALIZATION INCENTIVE PROGRAM (TRIP)

14:3-10.7 Calculating the TRIP charge

(a) - (d) (No change.)

(e) The TRIP charge shall be calculated annually using the following formula:

Image

For the purposes of the above formula, the following terms are defined as follows:

1. - 5. (No change.)
6. "ATCR" means the after tax cost rate, which shall be calculated by multiplying the return on ERI under the TRIP by (1 minus the income tax rate that applies to the regulated entity). The return shall be the rate for seven-year constant maturity treasuries, as shown in the Federal Reserve Statistical Release published on or closest to the August 31 immediately prior to the annual TRIP adjustment approval, plus 60 basis points. For example:
 - i. If the return on ERI (that is, the rate for seven year constant maturity treasuries) is five percent, and the Federal Income Tax Rate is 35 percent, and the Corporate Business Tax is nine percent, the ATCR will be 3.31 percent. This is calculated using the combined income tax rate of 40.85 percent $[(0.09 * 1) + (0.35 * (1 - 0.09))] * 5$, using the above formula as follows (5 percent +.6 percent) x (1 - 40.85 percent);
7. - 12. (No change.)

(f) (No change.)

SUBCHAPTER 8. ELECTRIC DISTRIBUTION SERVICE RELIABILITY AND QUALITY STANDARDS

N.J.A.C. 14:5-8.3 Service reliability

(a) - (b) (No change.)

(c) Interruptions shall not be reduced by unduly characterizing a sustained interruption as a series of momentary event interruptions. Electric service interruptions shall be reported in accordance with N.J.A.C. 14:3-~~3.9~~ 3.7.

Note: This is a courtesy copy of the adoption. The official version will be published in the New Jersey Register on May 19, 2008. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.